1879
10-5-48.

Removal of a County Seat

Jan 22 1880

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 170.

EBEN NEWTON ET AL., PLAINTIFFS IN ERROR,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF MAHONING COUNTY, OHIO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

FILED AUGUST 20, 1877.

Swayne

SUPREME COURT OF THE UNITED STATES.

No. 170.

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1 The United States of America to The Board of County Commissioners of Mahoning County, Ohio, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Ohio, wherein Eben Newton and others are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff" in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Noah H. Swayne, associate justice of the Supreme Court of the United States, this seventh day of February, in the year of our Lord one thousand eight hundred and seventy-seven.

N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

2 On this 2nd day of July, in the year of our Lord one thousand eight hundred and seventy-seven, personally appeared J. W. Canfield, before me, the subscriber, Giles Van Hyning, a notary public, and makes oath that he delivered a true copy of the within citation to Shelden Newton and J. H. Blackburn, in person, and that he also, on the same day, left a true copy of the within citation at the usual place of residence of James M. Jackson, all of whom are the Commissioners of Mahoning County, Ohio.

J. W. CANFIELD.

Sworn to and subscribed the 2nd day of July, A. D. 1877.

[SEAL.] GILES VAN HYNING,
Notary Public in for the County of Mahoning and State of Ohio.

3 UNITED STATES OF AMERICA,
Washington, D. C.:

EBEN NEWTON, WARREN HINE, DARIUS J. Church, Judson W. Canfield, Pierpont Edwards, Mathias Swank, Peter Gee, George F. Lynn, Henry Van Hyning, M. D. Laney, E. R. Rogers, Ira H. Bunnell, Loverayne L. Bostwick, Robert S. Hollis, George Rupright, Cornelius Curry, William S. Anderson, Horace B. Brainard, William H. Clark, Seth W. Brainard, Ensign Newton, James A. Kirk, John H. Clewell, Charles N. Schmick, Ansel D. Wood, Winfield M. Caldwell, Philip Simon, George Tow, William Schmick, Comfort S. Mygatt, Giles Van Hyning, William H. Schmick, Emery C. Swank, George H. Hollis, Ensign D. Lynn, A. G. Arnold, George W. Shellhorn, John Dodson, Charles French, Isaac W. Kirk, Jared Huxley, George C. Mygatt, Chauncey R. Fowler, Robert Manchester, William G. Corll, Jacob Resch, Samuel K. Crooks, Hugh A. Manchester, James M. Caldwell,
4 Hosea Hoover, William Wetmore, and Jackson Truesdale, plaintiffs,

versus

THE BOARD OF COUNTY COMMISSIONERS OF Mahoning County, Ohio, defendants.

In the Supreme Court of the United States.

Motion for the allowance of a writ of error to the supreme court of the State of Ohio.

And now come the above-named plaintiffs, and say that in the record and proceedigs of the supreme court of the State of Ohio, in the above-entitled cause, a certified copy of which is hereto attached, there is manifest error in this, to wit:

1st. That said supreme court of said State of Ohio erred in holding and deciding as matter of law that no contract with the proprietors or citizens of Canfield of binding obligation was made, shown, or
5 established by the act of the general assembly of the State of Ohio, entitled "An act to erect the county of Mahoning," passed February 16th, A. D. 1846, and of the other facts appearing upon said record.

2nd. The said court erred in holding as matter of law that the provisions of said act of the general assembly of the State of Ohio, entitled "An act to provide for the removal of the seat of justice of Mahoning County from the town of Canfield to the city of Youngstown in said county," passed April 9th, A. D. 1874, were not in conflict with the provisions of article one, section ten, of the Constitution of the United States, nor with any other provision of said Constitution.

3rd. That said court erred in dismissing said plaintiffs' petition.

4th. That said judgment of said supreme court of said State of Ohio was given for said defendants, whereas it ought to have been given for the said plaintiffs, according to the law of the land.

Wherefore the plaintiffs pray that a writ of error may be allowed, and that the said judgment may be reversed, annulled, and held
6 for naught, and that they may be restored to all things they have lost by reason thereof.

By JAMES A. GARFIELD,
Their Attorney.

I allow a writ of error in this case.

N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

7 *Appeal reserved in the district court of Mahoning County.*

Supreme court of Ohio, of the term of December, A. D. 1875.

STATE OF OHIO, *City of Columbus:*

EBEN NEWTON ET AL.
vs.
THE BOARD OF COUNTY COMMISSIONERS OF Mahoning County, Ohio.

At a supreme court of the State of Ohio, begun and held at the court room, in the capitol, in the city of Columbus, within and for said State, on Monday, the sixth day of December, in the year of our Lord one thousand eight hundred and seventy-five, before the honorable George W. McIlvaine, chief justice, John Welch, William White, George Rex, and William J. Gilmore, judges of said court, among other proceedings were the following, to wit:

EBEN NEWTON, WARREN HINE, DARIUS J. Church, Judson W. Canfield, Pierpont Edwards, Mathias Swank, Peter Gee, Geo. F. Lynn, Henry Van Hyming, M. D. Laney, E. R. Rogers, Ira H. Bunnell, Loverayne L. Bostwick, Robert S. Hollis, George Rupright, Cornelius Curry, William S. Anderson, Horace B. Brainered, William H. Clark, Seth W. Brainered, Ensign Newton, James A. Kirk, John H. Clewell, Charles N. Schmick, Comfort S. Mygatt, Ansel D. Wood, Winfield M. Caldwell, Philip Simon, George Tow, William Schmick, Giles Van Hyning, William H. Schmick, Emery C. Swank, George H. Hollis, Ensign D.
8 Lynn, A. G. Arnold, George W. Shellhorn, John Dodson, Charles French, Isaac W. Kirk, Jared Huxley, George C. Mygatt, Chauncy R. Fowler, Robert Manchester, William G. Corll, Jacob Resch, Samuel K. Crooks, Hugh A. Manchester, James M. Caldwell, Hosea Hoover, William Wetmore, and Jackson Truesdale, plaintiffs,

vs.

THE BOARD OF COMMISSIONERS OF MAHONING County, Ohio, who are at present by name Joseph M. Jackson, Jonathan Schillinger, and Sheldon Newton, defendants.

Be it remembered that heretofore, on the 14th day of April, A. D. 1876, came the said Eben Newton et als., plaintiffs, and filed in our said supreme court the following pleadings, files, papers, and certificates, which pleadings, files, papers, and certificates were in the words and figures following, to wit:

In the court of common pleas.

THE STATE OF OHIO,
Mahoning County, ss:

EBEN NEWTON, WARREN HINE, DARIUS J. Church, Judson W. Canfield, Pierpont Edwards, Mathias Swank, Peter Gee, Geo. F. Lynn, Henry Van Hyning, M. D. Laney, E. R. Rogers, Ira H. Bunnell, Loveryane L. Bostwick, Robert S. Hollis, George Rupright, Cornelius Curry, William S. Anderson, Horace B. Brainered, William H. Clark, Seth W. Brainered, Ensign Newton, James A. Kirk, John H. Clewell, Charles N. Schmick, Ansel D. Wood, Winfield M. Caldwell, Philip Simon, George Tow, William Schmick, Comfort S. Mygatt, Giles Van Hyning, William H. Schmick, Emery C. Swank, George H. Hollis, Ensign D. Lynn, A. G. Arnold, George W. Shellhorn, John Dodson, Charles French, Isaac W. Kirk, Jared
9 Huxley, George C. Mygatt, Chauncy R. Fowler, Robert Manchester, William G. Corll, Jacob Resch, Samuel K. Crooks, Hugh A. Manchester, James M. Caldwell, Hosea Hoover, William Wetmore, and Jackson Truesdale, plaintiffs,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF Mahoning County, Ohio, who are at present by name Joseph M. Jackson, Jonathan Schillinger and Sheldon Newton, defendants.

Petition.

The plaintiffs who for themselves as well as for three hundred other citizens of the county of Mahoning, whom it would be impracticable to bring before the court, on account of their great number, and who have a common interest with them in the litigation herein, complaining of the defendants, the board of county commissioners of Mahoning County, Ohio, say:

1. That they now are, and for a long time have been citizens of the township and town of Canfield, said county of Mahoning, owning real and personal estate therein, and doing business thereat.

2. That on and for a long time prior to the 16th day of February, A. D. 1846, the townships of Poland, Coitsville, Boardman, Youngstown, Canfield, Austintown, Ellsworth, Jackson, Berlin, and Milton comprised part of the organized county of Trumbull, and in the State of Ohio, and that the townships of Smith, Goshen, Beaver, Green and Springfield comprised a part of the organized county of Columbiana, in said State.

3. That on the said 16th day of February, A. D. 1846, the general assembly of the State of Ohio, in due form of law, by an act then duly
passed, entitled an act to erect the county of Mahoning, whereof a
10 copy is hereunto annexed, as Exhibit A, and made a part hereof,
erected, formed and created from and of the townships aforesaid the present county of Mahoning, and established the seat of justice therefor at the village and center of the township of said Canfield.

4. That the said general assembly, by the eighth section of said act, erecting and creating the said county of Mahoning, which is in the words and figures following, to wit: "That before the seat of justice shall be considered permanently established at Canfield, the proprietors or citizens thereof shall give bond with good and sufficient security, payable to the commissioners of said county hereafter to be elected, for the sum of five thousand dollars to be applied in erecting public buildings for said county, and that the citizens of Canfield shall also donate a suitable lot of land, on which to erect public buildings, permanently establishing and locating said seat of justice at Canfield upon the compliance by citizens of said Canfield, of the terms and conditions expressed in said eighth section of said act as hereinafter stated."

5. That in pursuance of the foregoing enactment, Eben Newton, one of the plaintiffs, joined with his wife, Mary S. Newton, both then and now residents and citizens of said Canfield, on the 5th day of October, A. D. 1846, by deed duly executed and acknowledged, did, on behalf of said citizens and proprietors of said Canfield, convey to the then duly elected and constituted commissioners of said Mahoning County, and to their successors in office forever, a suitable lot of land upon which to erect the public buildings for said county, a copy of which is
11 hereunto attached, marked Exhibit B, and made a part hereof; and in further pursuance of said enactment of said general assembly the said citizens of said Canfield on the day of , 1846, executed a bond to said commissioners of said county of Mahoning, with good and sufficient sureties in the penal sum of fifty thousand dollars, conditioned for the payment of said sum of five thousand dollars, as stipulated in said eighth section of said act, which bond was then accepted and approved by said commissioners, but which bond has since been lost or destroyed so that a copy thereof cannot be hereto attached.

6. That in order to more speedily to carry out the object of said act in the erection and construction of said public buildings and to lessen the burdens of taxation thereby, the said citizens of Canfield, many of whom are plaintiffs herein, with the assent of said commissioners, proceeded to cause to be erected on said lands so as aforesaid donated to said county a commodious building designed and suitable for a court-house for said county, and containing therein suitable rooms for the public administration of justice and offices for the various county officers, and at a cost therefor from their own private means of not less than ten thousand dollars and of the value thereof.

7. That on the 28th day of June, A. D. 1848, the said citizens of Canfield, through a committee appointed by them for that purpose, presented said deed for said lot of land and said court-house building thereon to the then county commissioners of said county for their acceptance in lieu of said payment of said five thousand dollars, as expressed
12 in said eighth section of said act creating said county, which deed for said lot of land and said court-house building thereon said commissioners then approved and accepted in lieu of said five thousand dollars and the stipulation of said act, and then took possession thereof, and have ever since held, owned, used, and occupied the same for their purposes aforesaid, whereby the real estate of the plaintiffs, as well as the others for whom they sue, became greatly enhanced in value, and their facilities for the transaction of their public business became greatly increased.

8. And the plaintiffs say that they and the other citizens of Canfield have fully complied with the conditions of said act of February 14th, 1846, required by the citizens and proprietors of said Canfield to be per-

formed; whereby the seat of justice for said county of Mahoning became and forever is permanently located and established at said Canfield.

9. And the plaintiffs further complaining say that against the remonstrance of a large majority of the citizens of said Canfield and of said county damaged and inconvenienced thereby, the general assembly of the State of Ohio, on the 9th day of April, A. D. 1874, in form passed the act entitled "An act to provide for the removal of the seat of justice of Mahoning County, Ohio, from the town of Canfield to the city of Youngstown, in said county," whereby it was provided as therein it fully appears and shown by a copy thereof hereto attached and marked
Exhibit C and made a part hereof.

13 10. That at the general election for said county in October, A. D. 1874, in pursuance of said last-mentioned act, the adoption and rejection thereof was submitted to the electors of said county, at which election the plaintiffs as well as a large majority of the electors of said Canfield, and also a large majority of the tax paying electors of said county, voted against the adoption of said act, but that a majority of the electors of said county were reported as having voted for the adoption thereof.

11. That soon after said election the citizens of said Youngstown organized an association for the purpose of, and then commenced the erection and construction of buildings in said city of Youngstown for the transaction of the public business of the county therein, preparatory to the removal of the seat of justice from said Canfield to said city of Youngstown; and although they as well as the defendants have had full notice of the premises and of the intention of the plaintiffs to resist the proposed removal by any proper proceeding therefor, and by suit if necessary, yet the said citizens of said Youngstown, through said association, are proceeding to erect so-called public buildings in said Youngstown, to wit, a court-house building, upon lands not donated by said citizens, and which, as plaintiffs are informed, and charge the fact to be, are not and cannot be secured to said county; yet the defendants threaten and are taking steps to accept said court-house building, whereby to effect the removal of said seat of justice and the records and transactions of the public business of the county thereto upon the ex-
14 penditure of the sum of one hundred thousand dollars upon said buildings, which, if carried into effect, will cause great and irreparable injury and damage to the plaintiffs, the citizens of Canfield in general, and to the majority of tax-paying citizens of said county, in that it would greatly diminish the value of their real estate, injuriously interfere with the transaction of their public business, and greatly inconvenience them in divers other ways in the transaction of their legitimate public business.

12. And the plaintiffs further say that the said citizens of Youngstown City and township and said association are prosecuting the erection and completion of said buildings, and will very soon have expended thereon the said sum of one hundred thousand dollars as by said legislative act required. That they have caused to be elected the defendants as commissioners of said county and other officers of said county, who are in the interests of said citizens of Youngstown, confederating and co-operating with them in the unlawful removal of said seat of justice; that said defendants, the said commissioners of said county, threaten to quietly accept said court-house building in Youngstown upon the said expenditure of one hundred thousand dollars thereon, thereby to enable said other county officers in the interest of said Youngstown to stealthily

remove the records and transactions of public business from their respective offices to said building in said city of Youngstown; and said other county officers so as aforesaid in the interest of said citizens of
15 Youngstown, Ohio, threaten that as soon as said building in Youngstown shall be accepted by said defendants, that they will remove the records and transactions of public business of their respective offices to said building in Youngstown in the night season, thereby to gain advantage during the pendancy of this or like litigation, to the great and irreparable damage of the plaintiffs, the citizens of Canfield in general, and a majority of the tax-paying citizens of said county of Mahoning.

13. And said plaintiffs further say that said act of the general assembly of the State of Ohio passed April 9th, 1874, makes no provision to compensate the plaintiffs or others for the damage sustained by them as aforesaid by said removal. And it attempts to, and if carried into effect would, impair and destroy the obligations of the contract entered into between the said citizens of Canfield and said general assembly as expressed in said act first recited herein, as shown by Exhibit A hereunto annexed, and is therefore in violation of the Constitution of the United States and the constitution of the State of Ohio, and is therefore void.

14. And the plaintiffs also say that said act of April 9th, 1874, is upon its face in derogation of the constitution of the State of Ohio, and is therefore unconstitutional and void.

Wherefore the plaintiffs, in consideration of the premises, and being remediless at law, pray the interposition of the chancery powers of the court in their behalf. In this, to wit: That the defendants, the
16 said board of county commissioners of the county of Mahoning, be restrained and enjoined from in any manner whatever accepting said court-house building, in the city of Youngstown, or any other building therein, or elsewhere, for and on behalf of said county of Mahoning as and for a public building wherein to transact the public business for said county; and from, in any manner, doing, or attempting to do, any act, either directly or indirectly, tending to remove the public records of said county, or the transaction of the public business of said county, usually transacted at Canfield, to the city of Youngstown. And that upon a final hearing hereof, said legislative enactment of April 9th, A. D. 1874, whereby the seat of justice of said county of Mahoning is sought to be removed to the city of Youngstown, in said county, be declared and decreed to be unconstitutional and void; and that the said board of county commissioners in perpetuity be forever enjoined and restrained from in any manner whatever doing any act whereby the present seat of justice for said county, now located at Canfield, shall in any manner be impaired or removed under and by virtue of said legislative enactment of April 9th, 1874, and for such other and further relief in the premises as equity and justice shall seem to demand.

By HUTCHINS & TUTTLE,
LUTHER DAY,
RUFUS P. RANNEY,
F. G. SERVIS,
Attorneys for Plaintiffs.

THE STATE OF OHIO,
Mahoning County, ss:

The plaintiffs, Giles Van Hyning, Peter Gee, George F. Lynn,
17 Eben Newton, D. J. Church, J. Truesdale, and Warren Hine, being duly sworn, according to law, upon oath say, each for himself

and not one for the other, that the statements in the foregoing petition are true.

GILES VAN HYNING.
PETER GEE.
GEORGE F. LYNN.
EBEN NEWTON.
D. J. CHURCH.
J. TRUESDALE.
WARREN HINE.

Signed in my presence by the above-named affiants, and by them sworn to before me this 19th day of January, A. D. 1876.

In witness whereof I hereunto affix my name and official seal.

[SEAL.] F. G. SERVIS,
Notary Public.

EXHIBIT A.

An act to erect the county of Mahoning.

SEC. 1. Be it enacted by the general assembly of the State of Ohio, That so much of the counties of Trumbull and Columbiana as come within the following limits or boundaries be, and the same are hereby, erected into a seperate county, which shall be known by the name of Mahoning, with the county seat at Canfield, to wit: Beginning at the northeast corner of the township of Coitsville, in the first range of townships in the Western Reserve; thence west along the south lines of the townships of Hubbard, Liberty, Weathersfield, Lordstown, and Newton, in Trumbull County, to the bound'ry line between Portage and Trumbull; thence south along said bound'ry line to the southeast corner of Deerfield, in said county of Portage; thence west along the
18 south line of the township of Deerfield to the bound'ry line between Stark and Columbiana Counties; thence south along said bound'ry line to the southeast corner of the township of Lexington, in said Stark County; thence east along the north lines of the townships of Knox and Butler, in Columbiana County, to the west line of Perry, in said county; thence north on said west line to the northwest corner of said township; thence east along the north line to the northeast corner of said township; thence south along the east line to the north line of the township of Salem, in said county of Columbiana; thence east along the north line of the townships of Salem, Fairfield, and Unity in said county to the bound'ry line between the State of Ohio and the State of Pennsylvania; thence north along said bound'ry line to the place of beginning, embracing within the boundaries aforesaid the townships of Poland, Coitsville, Boardman, Youngstown, Canfield, Austintown, Ellsworth, Jackson, Berlin, and Milton, parts of Trumbull County; and Smith, Goshen, Green, Beaver, and Springfield, parts of Columbiana County.

SEC. 2. That all suits, whether of a civil or criminal nature, which shall be pending within those parts of the counties of Trumbull and Columbiana, so to be set off and erected into a new county, previous to the organization of the said county of Mahoning, and all suits pending within the limits of the townships composing said county of Mahoning mentioned in the first section of this act, shall be prosecuted to final judgment and execution within the counties of Trumbull and Colum-
19 biana, respectively, in the same manner they would have been if

the said county of Mahoning had not been erected. And the sheriff, coroner, and constables of the said counties respectively shall execute all such process as shall be necessary to carry into effect such suits, prosecutions and judgments, and the collectors of taxes for said counties respectively shall collect all taxes that shall be levied and unpaid within the parts of the aforesaid counties previous to the taking effect of this act.

SEC. 3. That all justices of the peace within those parts of the counties of Trumbull and Columbiana which by this act are erected into a new county shall continue to exercise the duties of their offices until their time of service shall expire, in the same manner as if they had been commissioned for the county of Mahoning.

SEC. 4. That on the first Monday in April next the legal voters residing within the county of Mahoning shall assemble within their respective townships, at the usual place of holding elections, and shall proceed to elect their different county officers, who shall hold their offices until the next annual election, and until their successors are elected and qualified.

SEC. 5. That the court of common pleas and supreme court of said county shall be holden at some convenient house in the town of Canfield until suitable county buildings shall be erected.

SEC. 6. That all paupers, idiots, and insane persons belonging to either of said townships included in said county of Mahoning who are supported at the time of the passage of this act by either of the counties of Trumbull or Columbiana, shall hereafter be maintained at the proper expense of the townships to which said persons severally belong until such time as the commissioners of said county shall establish a poor-house agreeable to the act authorizing the same.

SEC. 7. That said county of Mahoning shall be attached to and form a part of the third judicial circuit of the court of common pleas of this State.

SEC. 8. That before the seat of justice shall be considered permanently established at Canfield the proprietors or citizens thereof shall give bond with good and sufficient security payable to the commissioners of said county, hereafter to be elected, for the sum of five thousand dollars, to be applied in erecting public buildings for said county, and that the citizens of Canfield shall also donate a suitable lot of ground on which to erect public buildings.

SEC. 9. That this act shall take effect from and after the first day of March, one thousand eight hundred and forty-six.

ELIAS F. DRAKE,
Speaker of the House of Representatives.
SEABURY FORD,
Speaker of the Senate.

FEBRUARY 16, 1846.

EXHIBIT B.

Eben Newton to county of Mahoning. Deed.

To all people to whom these presents shall come, greeting:

Know ye that we, Eben Newton and Mary S. Newton, wife of said Eben Newton, of Canfield, county of Mahoning, and State of Ohio, for and in consideration of one dollar, and that the public

buildings for said county of Mahoning shall be erected on the lands hereafter described and conveyed, do give, grant, bargain, donate, and convey to the county commissioners for said county, in perpetual succession, the following lot or parcel of land situated in Canfield, for said county, for the use of said county for the purpose hereinafter expressed, to wit, being part of lot 32, second division of land in said township of Canfield, begin'ing at the northeast corner of the lot, running south on the line of the public highway 14 rods; thence west 14 rods; thence north 14 rods on a line parallel with the east line; thence running east on the north line of the lot to the place of beginning, subject to a road which we propose to lay out on the north line of the above described piece, 50 feet in width and extending the whole length of the north line; the right to do which we do herein and hereby reserve; which conveyance is for the sole and exclusive purpose of erecting public buildings for said county of Mahoning, in fulfillment of the requisitions of the law erecting the county, so far as relates to the donation of a suitable lot of ground on which to erect public buildings, to have and to hold said lots of ground by said commissioners and their successors in office, for the purposes aforesaid forever, and we, the said grantors, do covenant to and with the said commissioners and their successors in office that we will warrant and defend the said premises to them, the said commissioners and their successors (the said reservation to be excepted), against all lawful claims and demands whatever.

22 And the said Mary S. Newton, wife of the said Eben Newton, for and in consideration of the erecting of said public buildings as aforesaid, do remise and release to said commissioners and to their successors for the purposes aforesaid all my right and title of dower in the lot conveyed, as above set forth.

In witness whereof we set our hands and seals this fifth day of October, A. D. one thousand eight hundred and forty-six.

EBEN NEWTON. [L. S.]
MARY S. NEWTON. [L. S.]

Signed, sealed, acknowledged, and delivered in presence of—
E. J. ESTEP,
L. C. NEWTON.

THE STATE OF OHIO,
Mahoning Co., ss:

CANFIELD, *October* , *A. D.* 1846.

Personally came before me Eben Newton, who signed and sealed the foregoing deed and acknowledged the signing and sealing thereof to be his act and deed for the purposes therein expressed; and the said Mary S. Newton, wife of the said Eben Newton, being by me examined seperate and apart from her said husband, and the contents of said deed being fully made know' to her by me, she did declare upon such separate examination that she did voluntarily sign, seal, and acknowledge the same, and that she is still satisfied therewith.

C. R. FOWLER,
Justice of the Peace.

Received May 1st, 1846. Recorded May 9th, 1846.
SEXTON SYKES,
County Recorder.

EXHIBIT C.

An act to provide for the removal of the seat of justice of Mahoning County from the town of Canfield to the city of Youngstown in said county.

SEC. 1. Be it enacted by the general assembly of the State of Ohio, that from and after taking effect of this section of this act as hereafter provided, the seat of justice in the county of Mahoning shall be removed from the town of Canfield, and shall be fixed, until otherwise provided by law, at the city of Youngstown, in said county.

SEC. 2. That the foregoing section of this act shall take effect and be in force when and so soon as the same shall be adopted by a majority of all the electors of said Mahoning County, voting at the next general election after the passage thereof, and when suitable buildings shall have been erected, as hereinafter provided.

SEC. 3. That the electors of said Mahoning County, at the next general election after the passage of this act, shall endorse, or otherwise place on their tickets either the words "for removal, or "against removal," and if a majority of all the electors of said Mahoning County, voting at said election, shall vote for removal, the first section of this act shall thereafter be considered and holden to be adopted by such majority, provided, that all tickets upon which the words "for removal" shall not be endorsed or otherwise placed, shall be taken and considered as votes "against removal" as fully as though the words "against removal" were endorsed or otherwise placed thereon.

SEC. 4. That judges and clerks of election in the several townships, wards, and voting precincts in said county at the said general
24 election shall cause all votes that may be so given for or against removal to be correctly counted, in doing which, all tickets upon which the words "for removal" are not endorsed or otherwise placed, shall be counted as votes "against removal," and shall enter and certify in their respective poll-books of said general election the number of votes so counted for, as well as against such removal, which poll-books shall be returned and opened as required by the act regulating said general election and the opening of the returns thereof; and the officers opening the same, shall at the same time they make, certify, and sign the abstracts required by law, also make, certify, and sign a separate abstract of all votes so returned for or against removal, showing the number so given in each township, and the footings or aggregate number given in all the townships, which abstract shall be forthwith deposited in the clerk's office of said county, and be by him forthwith recorded in the journal of the court of common pleas, of said county, which record, or a duly certified copy thereof, shall be taken and received as evidence for all purposes as the result of said election.

SEC. 5. That in case a majority of the electors of said county of Mahoning shall vote "for removal," as heretofore provided, the seat of justice and county seat shall be deemed and taken to be removed from Canfield in said county to the city of Youngstown, in said county, and to be located at said city of Youngstown; provided, however, that nothing in the act shall be so construed as to authorize the removal of said seat of justice to the city of Youngstown, until the citizens of the
25 city and township of Youngstown, and of sufficient size and suitably located to accommodate the court-house, jail, and necessary offices for said county, and shall have erected thereon or shall have caused to have erected thereon and completed thereon, suitable

buildings for court-house, jail, and all offices and rooms necessary for the transaction of all the public business of said county, at a cost for said buildings of not less than one hundred thousand dollars, and to the satisfaction and acceptance of the commissioners of said county, and all such buildings shall be fully completed within two years from the date of the election at which this act shall be ratified, and said commissioner shall not, nor shall any other authority of said county levy any tax on the taxable property of said county for said land or building, provided, that the citizens of Youngstown may, within said two years, build said public buildings and tender the same to said county commissioners.

It shall be the duty of the sheriff or coroner, as the case may be, to cause proclamation to be made to the qualified electors of said county of the time of holding said election, in the same manner as by law he is required to do in other elections, notifying said electors to vote as aforesaid on the question by which this act is submitted to them.

SEC. 7. The sections of this act subsequent to the first section shall take effect and be in force from and after their passage.

GEO. L. CONVERSE,
Speaker of the House of Representatives.
ALPHONSO HART,
President of the Senate.

Passed April 9th, 1874.

26 The hearing of the within application for an injunction is fixed for February 14th, 1876, at the court house, in Canfield, Mahoning County, Ohio, in open court, at 11 o'clock a. m., of said day, or as soon thereafter as counsel can be heard; and until such hearing and determination thereof the defendants are hereby enjoined as prayed for in the within petition upon the plaintiffs giving bond in the sum of $500 conditioned according to law, to be approved by the clerk of said court, and it is hereby ordered that notice of the hearing of this application shall be given to the defendants at least one week before the hearing thereof.

Witness my hand this 25th day of January, 1876.

[L. S.] PHILO B. CONANT, *Judge.*

Answer of defendants.

The said defendants, for their answer to plaintiffs' petition filed herein against them, say:

That they deny that said act of the general assembly of the State of Ohio, passed February 16th, 1846, or by said 8th section of said act the seat of justice of said Mahoning County was permanently located or established at said town of Canfield. They deny that said Eben B. Newton and wife conveyed by said deed, a copy of which is set out in said Exhibit B, or otherwise the land or lot therein mentioned and described as is alleged in the petition.

They say that *say that* they are not advised as to the facts alleged, concerning the execution of said bond mentioned in said last named act, and in said petition, and they therefore deny each and every allegation of the petition concerning the same.

27 They deny that said public buildings at said Canfield, were erected as alleged in said petition, by said citizens of Canfield, by or with the assent of said county commissioners of said Mahoning County, then in office; deny the said buildings were erected at a cost of said sum of ten thousand dollars, as alleged or at a cost of five thou-

sand dollars, and deny that the same were of any greater value than said last named sum when completed.

Deny that said buildings were either commodious or suitable for the public administration of justice, or for offices for the various county officers, as is alleged.

They deny that the plaintiffs, or they and other citizens of Canfield, have fully complied with or performed all of the conditions in said act of February 16th, 1846, required by them to be performed and complied with; deny that thereby or otherwise the seat of justice of said Mahoning County in anywise became, or forever is, permanently located or established at said town of Canfield.

They deny that against the remonstrance of a majority of the citizens of said Canfield, and of said county of Mahoning, damaged and inconvenienced thereby, the general assembly of the State of Ohio, passed said act of April 9th, 1874, a copy of which is set out in said Exhibit C.

They deny that at said election of October, 1874, a large majority of the tax-paying electors of said county of Mahoning voted against the adoption of said act as alleged.

They deny that these defendants threatened, or ever have
28 threatened, or are taking, or ever have taken, any steps to accept said court house building, which is now being erected at said city of Youngstown, in said county, either in order to effect the removal of the seat of justice or the records of said county, or the transaction of the public business of said county to said Youngstown, upon the expenditure of said sum of one hundred thousand dollars upon said buildings, or for any other object or purpose.

They deny that if said act of April 9th, 1874, shall be enforced or complied with, said public buildings at said Youngstown accepted, and said records and public business be removed from said Canfield to said Youngstown, that the same will cause irreparable injury or damage to the plaintiffs, or to them and the citizens of said Canfield in general, or to a majority of the tax-paying citizens of said county, in that it will greatly diminish the value of their real estate, injuriously interfere with the transaction of their public business, or greatly inconvenience them in divers other ways, in the transaction of their legitimate public business, as is alleged, or in any manner whatever.

They deny that said association of persons in the said city of Youngstown, engaged in the erection of said building at said city, caused these defendants to be elected as such county commissioners of said county, and the election of the other officers of said county, as alleged.

They deny that these defendants, or any of them, are in the interest of said citizens of Youngstown to any greater extent than they
29 are and of right ought to be, in the interest of the citizens of said Mahoning County generally, as such county commissioners. They say that they are not advised as to whether said other county officers of said county are in the interest of said citizens of Youngstown, as alleged, and they deny said allegation.

They deny that these defendants, or either of them, are or ever have been confederating or co-operating in any manner whatever with said citizens of Youngstown, or with any person or persons in the unlawful removal of said seat of justice, as alleged.

They deny that they or either of them are threatening or ever have threatened to quietly or otherwise accept said court-house building in said Youngstown upon the said expenditure of said one hundred thousand dollars, or of any other sum thereon.

They deny that they are doing, or ever have done, any act to enable

said other county officers to stealthily or otherwise remove the records and transactions of the public business from their respective offices to said building in said city of Youngstown. They have no knowledge or information concerning any threats on the part of other county officers to remove said records and their said offices, stealthily or otherwise, to said building at Youngstown, and they therefore deny the same.

They deny that said plaintiffs, or they and the citizens of Canfield, or any or either of them ever made or entered into, or have ever
30 had any contract or agreement of any kind whatever with the said general assembly of the State of Ohio, or with said State of Ohio, expressed by, or contained in, or created by the said act of February 16th, 1846, set out in said Exhibit A of said petition, or in any other manner concerning said seat of justice of said county of Mahoning.

They deny that said act of the general assembly of the State of Ohio, dated April 9th, 1874, and set out in said Exhibit C of said petition, attempts to, or, if carried into full effect, would impair or would in any manner destroy any obligation or provision of any contract or agreement entered into between said citizens of Canfield and said general assembly of Ohio.

They deny that said act is in the respects alleged, or in any respect or provision whatever, in violation of the Constitution of the United States or of the constitution of the State of Ohio, or that the same is in any respect or for any reason void.

They deny that said act of April 9th, 1874, is on its face, or otherwise, in derogation of the constitution of the State of Ohio, or that the same is unconstitutional or void, and they deny that plaintiffs, or they and those in behalf of whom they sue, are entitled to the relief prayed for, or any relief in the premises.

In further answering, the defendants specifically admit that after the due passage of said act of April 9th, 1874, and the general election held in October 1874, for said county, and in pursuance of said
31 act, the question of the adoption or rejection thereof was duly submitted to the electors of said county, and that a majority of all the electors of said county are reported as having voted in favor of the adoption thereof. That in pursuance thereof, the citizens of Youngstown associated to raise said sum of one hundred thousand dollars, in order to erect and complete the said public buildings, and that the same are now in process of construction, and that they will very soon have said sum expended thereon, and said buildings fully completed.

In further answering, defendants aver that said deed from said Eben Newton and wife to the county commissioners, only conveyed the premises therein mentioned, to said board of county commissioners so long as said premises should be used by said county for the public buildings thereof.

They aver that the full legal title in perpetuity of said land upon which said court-house and public buildings are now erected in said city of Youngstown can be secured to defendants for said purpose.

They aver that as such county commissioners of said county, they have done no act towards the performance of any provisions of said act of April 9th, 1874, nor have they considered what their action shall be thereunder, nor do they intend to take any steps toward the acceptation of said public buildings being so erected at said city of Youngstown, until the provisions and conditions of said act have been fully and faithfully complied with by said citizens of Youngstown, nor to
32 remove or in any manner aid in removing the records, offices, or

transaction of the public business to said buildings, until the same shall have been accepted in accordance with the provisions and spirit of said act of 1874; and that when said building shall have been completed in accordance with said act and in pursuance thereof tendered to the defendants, they will duly consider concerning their legal duties under the same, and shall take such action in the premises as they shall consider lawful, just and right under the circumstances. Wherefore, defendants pray that plaintiffs' said petition be dismissed.

JONES & MURRAY,
D. M. WILSON,
GEO. F. ARREL,
THOMAS W. SANDERSON,
H. H. MOSES,
Att'ys for Defendants.

THE STATE OF OHIO,
Mahoning County, ss:

Joseph M. Jackson, Jonathan Schillinger and Sheldon Newton being duly sworn, on oath say that they believe the facts stated in the foregoing answer to be true.

JOSEPH M. JACKSON,
JONATHAN SCHILLINGER,
SHELDON NEWTON,
Board of County Commissioners of Mahoning County, Ohio.

Sworn to and subscribed by said Joseph M. Jackson, Jonathan Schillinger and Sheldon Newton, before me this 7th day of February, A. D. 1876.

A. W. JONES,
Master Commissioner.

Decree of the common pleas.

This cause came on to be heard upon the application of the plaintiffs for the allowance of a temporary injunction, and was heard upon the petition, answer, proofs, and exhibits, and was argued by counsel and submitted to the Hon. Philo B. Conant, judge, holding said court, who on consideration overrule said application and refuse to allow said temporary injunction.

And thereupon the court, on motion of the plaintiffs, assign this cause for trial this 1st day of March, 1876, and thereupon this cause came on to be heard upon the petition, answer, proofs, and exhibits, on consideration whereof the court find the issues joined for the defendant
33 * and dismiss said petition.

The plaintiffs give notice of their intention to appeal this case to the district court; the court allow said appeal and fix the bond to perfect said appeal at $500, conditioned according to law and to the acceptance of the clerk of this court. To all of which the defendants except.

Reservation and finding of the district court.

At this March term of the district court, A. D. 1876, this cause came on to be heard upon the petition of plaintiffs' answer of defendants' proofs and exhibits; on consideration whereof the court find that soon after the passage of the act of 1846, whereby the county of Mahoning was

created as shown by Exhibit A to plaintiffs' petition attached, the citizens of the town of Canfield, many of whom were owners of real estate therein, viz, Eben Newton, Elisha Whittlesey, John R. Church, Warren Hine, Judson W. Canfield, Pierpont Edwards, William Wetmore, Matthias Swank, Darius J. Church, Comfort S. Mygatt, Chauncey R. Fowler and many others, executed and delivered to the then commissioners of Mahoning County a good and sufficient bond with sufficient surety securing to be paid to said commissioners the sum of five thousand dollars as provided in the eighth section of said act of 1846, which bond was accepted by said commissioner.

The said citizens then also caused to be executed a deed for certain lands by the owners thereof in fee upon which to erect the pub-
34 lic buildings for said county, as shown by Exhibit B attached to said petition.

That afterwards the said citizens of Canfield caused to be erected upon said lands a court-house commodious and suitable for the transaction of the public business of the county, at a cost of ten thousand dollars and more, of which, among others, the plaintiff, Eben Newton, subscribed and paid twenty-five hundred dollars; John R. Church, then a resident and owner of real estate in said Canfield, since deceased, and father of plaintiff, Darius Church, one thousand dollars; Elijah Whittlesey, then also a citizen of and owner of real estate in said Canfield, since also deceased, the sum of one thousand dollars; Chauncey R. Fowler, then and now a citizen of and owner of real estate in said Canfield, the sum of one hundred dollars; said Darius J. Church, one of said plaintiffs, being also a citizen of said Canfield, and now, by inheritance from said John R. Church, an owner of real estate in said town of Canfield.

That on the 29th day of June, 1848, the citizens of Canfield tendered said deed and said court-house thereon, to the commissioners of said county in lieu of the payment of said five thousand dollars, and which said commissioners then on behalf of the county accepted in lieu of said bond and in satisfaction of the eighth section of said enactment; that said commissioners then took possession of the same, caused said deed to be recorded, and said court-house to be furnished, and the same has ever been used as the court-house for said county.

That at the time of the passage of said act and ever since the
35 following named plaintiffs owned real estate in said Canfield: Eben Newton, Warren Hine, Judson W. Canfield, Pierpont Edwards, Matthias Swank, Darius J. Church, Comfort S. Mygatt, Chauncey R. Fowler, and William Wetmore.

And the court further find that a year before the passage of the act of April 9th, 1874, entitled "An act to provide for the removal of the seat of justice for Mahoning County from the town of Canfield to the city of Youngstown in said county," the citizens of said county formed a political party, called the Removal Party, for the purpose of forwarding the removal of said county seat, and by which the defendants were nominated and elected as such commissioners.

And the court further find that shortly after the adoption of said act of the general assembly of April 9th, 1874, which was adopted in the mode and manner provided in said act, and by a majority of nineteen hundred and seventeen votes, in an aggregate vote of 6,035, that then divers of the citizens of Youngstown associated themselves together for the purpose of procuring the necessary funds and erecting the public buildings, as provided in the 5th section of said act, and for that purpose appointed a building committee, consisting of Chauncey H. An-

drews, Hugh B. Wick, Henry Tod, Joseph Brown, and Matthew Logan.

That before the 16th day of March, 1875, the said city of Youngstown had acquired the title in fee simple of two lots of land in
36 said city, being the same in the deed hereinafter set forth.

On the 16th day of March, 1875, there being no board of improvements in said city, the city council of said city of Youngstown, in due form of law, passed and duly published an ordinance, of which a copy is contained in the deed aforesaid, hereinafter set forth, and thereupon the mayor of said city, in due form of law, executed a deed for said lots to said building committee above named, which deed is in the words and figures following, to wit:

The city of Youngstown to C. H. Andrews et al. Deed.

Know all men by these presents: whereas, on the 16th day of March, A. D. 1875, the city council of the city of Youngstown, county of Mahoning, and State of Ohio, duly and legally passed an ordinance, of which the following is a true and correct copy, to wit:

An ordinance to provide for the sale and conveyance of two certain lots of land therein described.

Whereas on the 9th day of April, A. D. 1874, the general assembly of the State of Ohio authorizing and providing for the removal of the seat of justice in the county of Mahoning and State of Ohio, from the town of Canfield to the city of Youngstown in said county, upon certain specified conditions, one of which is that the citizens of the city and township of Youngstown, in said county, shall donate a lot or lots in said city of sufficient size and suitably located to accommodate
37 the court-house, jail, and necessary for offices for said county.

And whereas Chauncey H. Adams, Hugh B. Wick, Joseph H. Brown, Henry Tod, and Matthew Logan have been by said citizens duly and legally appointed a building committee, with full power and authority to purchase such lot or lots, and build and construct thereon such court-house, jail, and necessary offices; and said committee being of opinion that the following described lots, to wit, lot number three hundred and thirty-five, according to the latest numbering of city lots in said city, located on the northwest corner of Wood and Market streets, and having a frontage on Wood street of 164 feet, and extending back at right angles therewith a distance of 150 feet; and lot number four hundred and seventeen, according to the latest numbering of city lots in said city, located on the northeast corner of Wood and Market streets, and having a frontage on Wood street of 150 feet, and extending back at right angles therewith a distance of 150 feet, are in size sufficient and in location for said donation, and have therefore purchased the same from said city. Therefore—

SEC. 1. Be it ordained by the city council of the city of Youngstown, that the mayor of said city shall be and is hereby authorized and required, upon payment to him for said city of ten dollars, to properly execute and deliver to said Chauncey H. Andrews, Hugh B. Wick, Joseph H. Brown, Henry Tod, and Matthew Logan, a deed conveying
38 said lots hereinabove described, to them, their successors, and assigns, forever, in trust in fee upon the trust hereinafter specified.

SEC. 2. That in said deed grantees shall be authorized and required

to build and construct upon one or both of said lots such court-house, jail, and necessary offices for said county, which shall in all respects comply with the provisions of said act of said general assembly, and if in the opinion and judgment of said grantees in trust one of said lots shall be sufficient in size to build and construct thereon such court-house, jail, and necessary offices, then and in that event said grantees in trust shall be authorized and required to sell the other for such sum as it may be worth, and convey the same in fee simple to the purchasers thereof, and to expend such sum as may be received by them therefor in building and constructing such court-house, jail, and necessary offices; and that if in the opinion and judgment of grantees in trust a lot or lots of land more conveniently and suitably located can be procured in said city, either by purchase or exchange, whereon said court-house, jail, and necessary offices could be built and constructed at a less expense than upon either or both of said lots, then and in that event said grantees in trust shall in said deed be authorized and required to sell said lots for such sum as they may be worth, and convey the same in fee simple to the purchaser thereof, and to expend such sum as may be received by them therefor in procuring such more convenient and suitable lot or lots, and in building and constructing thereon when procured such court-house, jail, and necessary offices, or to exchange said lots for such more convenient and suitable lot or lots, and to expend the difference in value, if any received by them, in constructing such court-house, jail, and necessary offices upon the lot or lots exchanged for, and that said grantees in trust shall be authorized and required in said deed to convey in accordance with the provisions of said act of the general assembly such court-house, jail, and necessary offices, with the lots whereon the same may be located, to the commissioners of said county of Mahoning whenever such court-house, jail, and necessary offices shall be completed and accepted by said commissioners.

SEC. 3. That this ordinance shall take effect from and after its publication according to law. Passed in council March 6th, 1875.

D. V. TILDEN,
President of Council.

GEO. J. WILLIAMS, *Clerk.*

And whereas said ordinance has been duly and legally published the length of time required by law, and is now in full force and effect in law:

Now, therefore, in consideration of ten dollars paid to its use by said grantees herein, the said city of Youngstown and the said city council, acting by and through Wm. M. Osborn, mayor of said city, who hereby acknowledges the receipt of said consideration, do hereby grant, bargain, sell, and convey unto said Chauncey H. Andrews, Hagh B. Wick, Joseph H. Brown, Henry Tod, and Matthew Logan, and unto their successors and assigns forever, said lots of land hereinabove and in said ordinance mentioned and described:

To have and to hold the same, together with the appurtenances and every part thereof, unto said grantees, their successors and assigns forever, in fee, upon the trust nevertheless and to and for the uses and purposes in said ordinance limited, described, and declared.

In witness whereof the said city of Youngstown and the said council have caused said Wm. Osborn, mayor as aforesaid, to subscribe his

name and have caused the corporate seal of said city to be affixed to these presents, this 30th day of March, A. D. 1875.

[L. S.] WM. M. OSBORN,
Mayor.

Signed, sealed, and acknowledged in the presence of—
JOHN M. EDWARDS.
JOHN A. LADD.

THE STATE OF OHIO,
Mahoning County, ss:

Personally appeared before me, a notary public in and for said county, William M. Osborn, mayor as aforesaid, who acknowledged the signing and sealing of the above deed to be his free and voluntary act and deed, and to be the free and voluntary act and deed of said city and said council.

[SEAL.] JOHN M. EDWARDS,
Notary Public.

Received for record June 2, 1875. Recorded June 9th, 1875.
S. B. REIGER,
Recorder.

41 The said building committee therefore proceeded to construct, and are causing to be constructed, upon one of said lots, at a cost of one hundred thousand dollars and upwards, the public buildings as provided for in said act; and upon the completion of the same design to convey the same to the commissioners of said county as and for a performance of the conditions provided in the fifth section of said act of April 9, 1874.

And the court further find that the aforesaid title to said lots and buildings is the only title which said building committee and said citizens of Youngstown, and said city of Youngstown, now have to the same.

And the court further find that said lots now, and at the time of executing said deed, are and were each of the value of ten thousand dollars. And the court further find, that there is good reason to believe, that upon the completion of said buildings upon said lot in said city of Youngstown as provided in said act, and upon the execution and tender by said building committee to said commissioners of a deed thereof, the said commissioners will accept the same and proceed to do any act pertinent to their office as such commissioners which may be necessary for and pertinent to the removal of said county seat to the city of Youngstown.

And the court find, as a matter of law, that if upon the facts aforesaid, under the pleadings in the case, the plaintiffs ought to have any
42 relief, then relief ought to be so granted to them herein, and otherwise that the petition ought to be dismissed.

And because, in the opinion of the court, difficult and important questions arise in the determination of said matters, the court do, upon motion of both parties, order that the same be reserved for decision in the supreme court for decision and final judgment.

And that afterwards, to wit, on the 26th day of April, 1876, a motion to take this cause out of its order was filed in this cause, and which motion was in the words and figures following, to wit:

Motion.

In the supreme court.

THE STATE OF OHIO,
Franklin County, ss:

EBEN NEWTON ET ALS.
vs.
THE BOARD OF COUNTY COMMISSIONERS OF Mahoning County.

Reserved from the district court of Mahoning County.

To the honorable judges of the supreme court:

The plaintiffs in this case move your honors that the same be ordered to be taken out of its order on the docket and assigned for trial at such early day in the present session of this court as shall be convenient to your honors, and as shall afford to the parties due time for preparation therefor.

And for cause of this motion plaintiffs' counsel refer your honors to the record herein, and to the order of reservation thereof, and say that the early decision thereof is highly important to the due administration of justice and of the other public affairs of said county, and is
43 otherwise of much importance, involving the construction and constitutionality of the statute laws of the State.

F. G. SERVIS AND
GEORGE M. TUTTLE,
Att'ys for Plaintiffs.

And upon the same day and at the same time there was also filed in our said court in said cause a notice, and which notice was in the words and figures following, to wit:

Notice.

Supreme court of Ohio.

EBEN NEWTON ET ALS.
vs.
THE BOARD OF COUNTY COMMISSIONERS OF Mahoning County, Ohio.

The defendants will take notice that on Saturday, the 29th day of April, A. D. 1876, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, the plaintiffs will apply to said court for an order to take this case up out of its order on the docket *on the docket*, and to set the same for hearing upon a day certain.

GEORGE M. TUTTLE,
F. G. SERVIS,
Attorneys for Plaintiffs.

We have notice of the above this 13th day of April, A. D. 1876.

JONES & MURRAY,
GEO. F. ARREL,
Att'ys for Def'ts.

And afterwards, on the 9th day of May, A. D. 1876, an order was made by our said court taking said cause out of its order for hearing, and which order was in the words and figures following, to wit:

Motion to take cause.

EBEN NEWTON ET ALS.
vs.
THE BOARD OF COUNTY COMMISSIONERS OF Mahoning County. } No. 696. General docket; out of its order.

Ordered that the motion be and the same is hereby granted.

And afterwards, on the 4th day of November, A. D. 1876, a judgment and decree was entered in said , and which judgment and decree was in the words and figures following, to wit:

EBEN NEWTON & OTHERS
vs.
THE BOARD OF COUNTY COMMISSION-
44 ers of Mahoning County.

This cause was brought into this court by the order of reservation of the district court of Mahoning County, and came on for trial and hearing upon the plaintiffs' petition with the exhibits A, B & C, therein referred to and set forth, which exhibits are hereby declared to be a part of the record herein, and upon the defendants' answer and the record of the order of reservation, and of the findings of the district court aforesaid.

And it was upon said trial and hearing insisted on the part of said plaintiffs that a contract of binding obligation with said proprietors and citizens of said Canfield mentioned in the said act entitled "An act to erect the county of Mahoning," passed by the general assembly of the State of Ohio on the 16th day of February, A. D. 1846, set forth in said Exhibit A, was established, made and shown by virtue of the provisions of said act, and of the facts shown by the record herein, namely, a contract to the effect that said county seat should never be removed from Canfield without the consent of said proprietors and citizens of Canfield and without compensation to them, and that the provisions of said act of the general assembly of the State of Ohio, set forth in said Exhibit C, entitled "An act to provide for the removal of the seat of justice of Mahoning County, Ohio, from the town of Canfield to the city of Youngstown in said county," passed on the 9th day of April, A. D. 1874 (71 Ohio Laws, page 180), were in contravention of said obligations of
45 said contract so insisted upon and claimed, and that said provisions of said last-mentioned act would if of force impair said obligations, and that said provisions were therefore opposed to the Constitution of the United States, and in particular to so much of article one (1), section ten (10), thereof as provides that no State shall pass any law impairing the obligations of contracts, and were in so far void.

But the court upon trial and after consideration was of the opinion that no contract with said proprietors or citizens of binding obligation was made, shown or established by said act entitled "An act to erect the county of Mahoning," and the other facts appearing upon said record, and that the provisions of said above mentioned act, passed on the 9th day of April, 1874, as aforesaid, were not opposed to said provisions of said article one, section ten, of the Constitution of the United States, nor to any other provisions of said Constitution, nor to any provision of the constitution of the State of Ohio, and were valid and binding, and that the plaintiffs by virtue of none of the other matters appearing upon said record were entitled to relief in this action.

And upon the holding aforesaid, and in consideration thereof, the court do hereby order, adjudge and decree that the plaintiffs' petition should be, and the same is hereby, dismissed, and that the defendants recover of the plaintiffs their costs herein, taxed at $190.35.

And it is further ordered that a special mandate be sent to the court of common pleas of Mahoning County to carry their judgment
46 into execution.

And thereupon, on motion of the plaintiff, it is ordered to be certified and made a part of the record and entry herein, that on the trial and hearing of this case it became and was material to determine whether by virtue of the said provisions of the said act, entitled "An act to erect the county of Mahoning," and of the other facts shown in the said record, a contract of binding force and obligation was created as claimed by the plaintiff as aforesaid, and whether the said provisions of said act of the general assembly of the State of Ohio, entitled "An act to provide for the removal of the seat of justice of Mahoning County from the town of Canfield to the city of Youngstown in said county," were opposed to or in conflict with said provisions of the Constitution of the United States, and that upon said questions this court determined and held as already stated herein, and in favor of the validity of said last-named act.

And this court order it to be further certified, that this court is the highest court of law and equity in the State of Ohio in which a decision of this case can be had.

THE STATE OF OHIO,
City of Columbus, ss:

I, Arnold Green, clerk of the supreme court of the State of Ohio, do hereby certify that the foregoing is a true copy of the record of the case of Eben Newton et als. against The Board of County Commission-
47 ers of Mahoning County, Ohio, as the same appears of record in said court.

In witness whereof I have hereunto subscribed my name and affixed the seal of said supreme court this 10th day of August, A. D. 1876.

[SEAL.] ARNOLD GREEN,
Clerk of the Supreme Court of the State of Ohio,
By RICHARD J. FANNING, *D'p'ty.*

48 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the justices of the supreme court of the State of Ohio, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Eben Newton, Warren Hine, Darius J. Church, Judson W. Canfield, Pierpont Edwards, Mathias Swank, Peter Gee, George F. Lynn, Henry Van Hyning, M. D. Laney, E. R. Rogers, Ira H. Bunnell, Loverayne L. Bostwick, Robert S. Hollis, George Rupright, Cornelius Curry, William S. Anderson, Horace B. Brainard, William H. Clark, Seth W. Brainard, Ensign Newton, Jas. A. Kirk, John H. Clewell, Chas. N. Schurick, Ansel D. Wood, Warfield M. Caldwell, Philip Simon, George Tow, William Schurick, Comfort S. Mygatt, Giles Van Hyning, William H. Schurick, Emery C. Swank, Geo. H. Hollis, Ensign D. Lynn, A. G. Arnold, George W. Shellhorn, John Dodson, Charles French, Isaac W. Kirk, Jared Huxley, George C. Mygatt, Chauncey R. Fowler, Robert Manchester, William G. Corll, Jacob Resch, Samuel K. Crooks, Hugh A.

Manchester, James M. Caldwell, Hosea Hoover, William Wetmore, and Jackson Truesdale, plaintiffs, and The Board of County Commissioners of Mahoning County, Ohio, defendants, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their
49 validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the seventh day of February, in the year of our Lord one thousand eight hundred and seventy-seven.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Allowed by—

N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

50 STATE OF OHIO,
City of Columbus, ss:

To the honorable Supreme Court of the United States:

Pursuant to the command of your within writ of error directed to us, we, under our seal, distinctly and openly, the record and proceedings within mentioned, with all things concerning the same, before the judges within named, in a certain authenticated transcript to this writ attached, do send as within commanded.

In witness whereof I, Arnold Green, clerk of the supreme court of Ohio, have set my hand and the seal of said court this 10th day of August A. D. 1877.

[SEAL.]

ARNOLD GREEN, *Clerk*,
By RICHARD J. FANNING,
Deputy.

(Indorsement on cover:) No. 170. Eben Newton et al., plaintiffs in error, vs. The Board of County Commissioners of Mahoning County, Ohio. Ohio sup. court. Filed 20th August, 1877.

(Indorsed:) Supreme court of Ohio. Eben Newton et al. vs. The Board of County Commissioners of Mahoning County. Record.

Supreme Court of the United States.

EBEN NEWTON AND OTHERS,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF MAHONING COUNTY, OHIO.

ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

ARGUMENT FOR PLAINTIFFS

BY

LUTHER DAY.

S. D. HARRIS, PRINTER.

SUPREME COURT OF THE UNITED STATES.

EBEN NEWTON ET ALS.

vs.

THE BOARD OF COUNTY COMMISSIONERS

OF MAHONING COUNTY, OHIO.

ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

STATEMENT OF THE CASE.

The controversy relates to the removal of a county seat from one town to another. The plaintiffs seek to prevent the removal. To this end they invoke the protection afforded by the constitution of the United States against a State passing "any law impairing the obligation of contracts."

The case briefly stated is this: On February 16, 1846, the General Assembly of the State of Ohio passed "An act to create the county of Mahoning." The first section creates the county and defines its boundaries, which include, among others, the towns of Canfield and Youngstown. It also enacts that the new county "shall be known by the name of Mahoning, WITH THE COUNTY SEAT AT CANFIELD."

The sections of the act which follow, relate to matters growing out of the creation of the new county, and do not affect

the location of the county seat until we reach the eighth section, which is as follows:

"SEC. 8. That before the seat of justice shall be considered PERMANENTLY established at Canfield, the PROPRIETORS or CITIZENS thereof shall GIVE BOND with good and sufficient security payable to the Commissioners of said county, hereafter to be elected, for the sum of FIVE THOUSAND DOLLARS to be applied in erecting public buildings for said county, and that the citizens of Canfield shall also DONATE A SUITABLE LOT OF GROUND on which to erect public buildings."

A copy of the act is attached to the record as exhibit A, page 4.

To secure the permanent establishment of the county seat at Canfield, numerous citizens of that town—some of whom still survive and are plaintiffs in this suit—in compliance with the provisions of said section eight, executed their bond to the County Commissioners for five thousand dollars, which was accepted by the Commissioners. They also caused a conveyance to be made to the county of a suitable lot of ground, on which to erect the county buildings.

Thereupon the citizens of Canfield erected a court house on the lot, commodious and suitable for the transaction of the public business of the county, at a cost of more than ten thousand dollars; which, on June 29, 1848, the Commissioners of the county accepted of the citizens of Canfield, in behalf of the county, in full satisfaction of their bond, and as a full compliance with section eight of the act of 1846; and thence forward the court house was used as a seat of justice, and Canfield continued to be the county seat of the county. (Record, pages 11 and 12.)

These premises, the plaintiffs claim, constitute a contract with the state for the permanent establishment of the county seat at Canfield.

April 9, 1874, the General Assembly of the State of Ohio, without providing for any compensation to the plaintiff, passed an act removing the seat of justice of Mahoning county from

Canfield to Youngstown; provided that a majority of the electors of the county, voting at the general election, should vote in favor of the removal, and that the citizens of Youngstown, within two years, should donate a lot for the public buildings of the county, and erect thereon such buildings at a cost of not less than one hundred thousand dollars. (The act is copied in the record, exhibit C, page 7.)

At the next election a majority of the votes was obtained in favor of removal.

The citizens of Youngstown having so nearly complied with the provisions of the act of 1874, that a removal was imminent, this suit was brought by the citizens of Canfield to enjoin the removal.

ARGUMENT.

It may be remarked in the outset, that the act of 1874, which provided for the removal of the county seat, cannot be sustained on the ground that it was passed in the exercise of the legislative power of eminent domain. Nor is this claimed by the defendants; for such a claim must necessarily admit that the plaintiffs had acquired valuable rights under the act of 1846 which established the county seat at Canfield. Moreover, under the constitution of the state, that power cannot be exercised without providing for compensation to the parties injured. *Watson's Executor v. Trustees of Pleasant Township*, 21 Ohio St. 667; *Lamb & McKee v. Lane*, 4 Ohio St. 167.

No provision for compensation was made in the act for the removal of the county seat. On the contrary, every step towards the removal has been taken on the supposition that no citizen of Canfield had any rights under the act of 1846 which the state was bound to respect.

The single question, then, as the case now stands, is, whether upon the case made in the record, the act of 1846 worked a contract for the permanent establishment of the county seat at Canfield. It was conceded and held by the State Court, that, if it did, the plaintiffs were entitled, upon the case made, to the relief sought by them.

It is claimed by the plaintiffs that the eighth section of the act, when complied with by the citizens of Canfield, constituted a contract with them by the State for the permanent location of the county seat at that place.

The decision of the State Court otherwise was more nearly in harmony with principles declared in former decisions of

that Court which were reversed by this, than it was with the principles well settled by this Court.

Fortunately, in this class of cases this Court will interpret for itself the state law relied on as the contract between the parties. As said by Chief Justice TANEY in *Ohio Life Ins. and Trust Co. v. Debolt*, 16 How. 433:

"It must necessarily decide whether the words used are words of contract, and what is their true meaning, before it can determine whether the obligation the instrument created has or has not been impaired by the law complained of. And in forming its judgment upon this subject, it can make no difference whether the instrument claimed to be a contract is in the form of a law passed by the legislature, or is a covenant or agreement by one of its agents acting under the authority of the State."

In construing the statute in question, I shall hereafter have occasion to consider it in both these lights—as in the form of a law, and as the language of an agent invested with full power in the premises.

RULE OF CONSTRUCTION.

Since it is to be determined whether the words used in the section in question, "are words of contract, and what is their true meaning," we are confronted with a rule of construction, that legislative grants and contracts are to be construed most favorably to the State.

This rule is strenuously urged by the defendants, as if the meaning of the section was too obvious to be evaded without some special favor in their behalf.

But the plaintiffs do not shrink from the rule. Their case bears the test. The rule, however,—if it ever had any application to grants or contracts by the state with individuals in regard to a specific thing for a specific price or consideration paid therefor,—does not tolerate the defeating of a grant or contract by any hypercritical construction.

In *Debolt's case*, 16 How. 435, the Chief Justice, speaking of the surrender of the right of taxation to a corporation, says:

"The rule of construction, in cases of this kind, has been well settled by this Court. The grant of privileges and exemptions to a corporation are strictly construed against the corporation, and in favor of the public. Nothing passes but what is granted in clear and explicit terms. And neither the right of taxation nor any other power of sovereignty which the community have an interest in preserving, undiminished, will be held by the Court to be surrendered, unless the intention to surrender is manifested by words too plain to be mistaken."

If it be conceded that the rule as there stated is applicable to the case in hand, it only requires that the intention to contract or grant a privilege, should be clearly and plainly manifested by the act.

In *Charles River Bridge v. Warren Bridge*, 11 Peters, 548-9, the same learned Chief Justice assigns the following as the reason for denying the privileges claimed:

"Upon all these subjects the charter is silent; and nothing is said in it about a line of travel, so much insisted on in the argument, in which they are to have exclusive privileges. No words are used, from which an intention to grant any of these rights can be inferred. If the plaintiff is entitled to them, it must be implied, simply, from the nature of the grant; and cannot be inferred from the words by which the grant is made." And again: "There are no words which import such a contract as the plaintiffs in error contend for, and none can be implied."

This cannot be said of the act of 1846. Section 8 contains "words" which clearly "import" the very contract claimed by the plaintiffs.

But the rule under consideration was vigorously pressed and much relied upon in the later case of the *Binghampton Bridge*, 3 Wall. 51, and the Court gave it a full consideration. For an exposition of the rule and its application, I cannot do better than to quote from the opinion delivered in that case, page 74:

"A great deal of the argument at the bar was devoted to the consideration of the proper rule of construction to be adopted in the interpretation of legislative contracts. In this

there is no difficulty. All contracts are to be construed to accomplish the intention of the parties; and in determining their different provisions, a liberal and fair construction will be given to the words, either singly or in connection with the subject matter. It is not the duty of a court by legal subtlety, to overthrow a contract, but rather to uphold it and give it effect; and no strained or artificial rule of construction is to be applied to any part of it. If there is no ambiguity, and the meaning of the parties can be clearly ascertained, effect is to be given to the instrument used, whether it is a legislative grant or not. In the case of the Charles River Bridge, the rules of construction known to the English common law were adopted and applied in the interpretation of legislative grants, and the principle was recognized, that charters are to be construed most favorably to the state, and that in grants by the public nothing passes by implication. This Court has repeatedly since reasserted the same doctrine; and the decisions in the several states are nearly all the same way. The principle is this: that all rights which are asserted against the state must be clearly defined, and not raised by inference or presumption; and if the charter is silent about a power, it does not exist. If, on a fair reading of the instrument, reasonable doubts arise as to the proper interpretation to be given to it, those doubts are to be solved in favor of the state; and where it is susceptible of two meanings, the one restricting the powers of the corporation, that construction is to be adopted which works the least harm to the state. But if there is no ambiguity in the charter, and the powers conferred are plainly marked, and their limits can be readily ascertained, then it is the duty of the court to sustain and uphold it, and to carry out the true meaning and intention of the parties to it. Any other rule of construction would defeat all legislative grants, and overthrow all other contracts."

In no case is the rule more strongly stated. But, upon the principle that a "well founded" or reasonable doubt can arise only upon a fair and reasonable construction, it also upholds, with equal force, the plain duty of giving to the instrument "a fair reading," and to its words a "fair construction," with a view "to accomplish the intention of the parties;" and it justly denounces the overthrow of a "plainly marked" contract by any "strained or artificial rule of construction," or by "legal subtlety."

Practically, then, the rule merely requires the exercise of good sense to ascertain from the words used what was the understanding of the parties.

It is undoubtedly true that when a contract depends upon a law, no rights can be asserted against the state if the law is silent upon the subject; nor, in such case, can they be raised by inference or presumption. But the case is quite different where the right arises by necessary implication from the language of the law. The implication, however, must be clear, and not "dubious." Such implications are a part of the law itself as much as if they were expressed. They are the "import" of the words used, and so are not mere presumptions. Very few legislative contracts are fully expressed in words, and never when they rest upon a mere law. But the words of the law must be such as clearly import or imply a contract. A charter of a bridge or ferry, though the charter be silent on the subject, implies a contract not to grant to others a charter for a bridge or ferry at the same crossing. So a charter, fixing a rate of taxation in lieu of other taxes, implies a contract not to impose other taxes.

This principle of necessary implication is clearly illustrated by the Binghampton Bridge case. The monopoly granted was only implied from a prohibition against other persons; and a little "subtlety" would have held that this prohibition expended itself wholly on such persons, and thus would have overthrown the contract; yet, upon a fair construction of the law, the contract is clearly implied therein. In the opinion of the court, page 78, it is said:

"The clause of the Delaware charter on the subject is in the following words: 'that it shall not be lawful for any person or persons to erect any bridge, or establish any ferry across the west and east branches of the Delaware River, within two miles, either above or below the bridges, to be erected and maintained in pursuance of this act.' This was, undoubtedly, a covenant with the Delaware Company that they would be free from competition within the prescribed limits."

So laws which amount to a proposition on the part of the State, when accepted by individuals, become binding contracts. Cooley Con. Lim. 284. In *Woodruff v. Trapnall*, 10 How. 190, where it was provided in a charter of a bank, of which the State was the sole stockholder, that its notes should be received in payment of all debts due to the State, it was held that this constituted a contract with the holders of the notes to receive them in payment of State dues; and, in the opinion, it is declared to be "a continuing guarantee by the State, that the notes should be so received. Such a contract would be binding on an individual, and it is not less so on a State." To the same effect is *Furman v. Nichol*, 8 Wall. 44.

As conclusive upon this subject, I quote from Mr. Justice McLEAN delivering the opinion of the Court in *State Bank of Ohio v. Knoop*, 16 How. 386:

"In the case of Gordon v. The Appeal Tax, 3 How. 133, Mr. Justice WAYNE, giving the opinion of the Court, held: 'That the charter of a bank is a franchise, which is not taxable as such, if a price has been paid for it, which the legislature accepted. But that the corporate property of the bank, being separable from the franchise, may be taxed, unless there is a special agreement to the contrary.'

"And the Court say, the language of the 11th section of the act of 1821 is: 'And be it enacted, that upon any one of the aforesaid banks accepting and complying with the terms and conditions of this act, the faith of the State is hereby pledged not to impose any further tax or burthen upon them during the continuance of their charter under this act.' This, the Court say, is the language of grave deliberation, pledging the faith of the state for some purpose, some effectual purpose. Was that purpose the protection of the banks from what that legislature and succeeding legislatures could not do, if the banks accepted the act, or from what they might do in the exercise of the taxing power? The terms and conditions of the act were, that the banks should construct the road and pay annually a designated charge upon their capital stocks, as the price of the prolongation of their franchise of banking. The power of the state to lay any further tax upon the franchise was exhausted. That is the contract between the state and the banks. It follows, then, as a matter of course, when the

legislature go out of the contract, proposing to pledge its faith, if the banks shall accept the act not to impose any further tax or burden upon them, that it must have meant by these words an exemption from some other tax than a further tax upon the franchise of the banks. The latter was already provided against; and the Court held that the exemption extended to the respective capital stocks of the banks as an aggregate, and to the stockholders, as persons on account of their stocks. The judgment of the court of appeals of Maryland, which sustained the act imposing an additional tax upon the banks, was reversed.

"It will be observed that the above compact was applied to the stocks of the bank and the interest of the stockholders by construction." [To this point see also *Farrington v. Tennessee*, 95 U. S. 679.]

And again, on page 388, the learned Justice said:

"A case is cited from The Stourbridge Canal v. Wheely, 2 Barn. & Adol. 793, to show that no implications in favor of chartered rights are admissible. Lord Tenterden says: 'That any ambiguity in the terms of the contract must operate against the adventurers, and in favor of the public; and the plaintiffs can claim nothing that is not clearly given them by the act.' In the same opinion, his lordship said: 'Now, it is quite certain that the company have no right expressly to receive any compensation, except the tonage paid for goods carried through some of the canals or the locks on the canal, or the collateral cuts, and it is therefore incumbent upon them to show that they have a right clearly given by *inference* from some of the other clauses.'

"Neither this, the Rhode Island Bank case, nor the Charles River Bridge case, 11 Pet. 420, affords any aid to the doctrines maintained, with the single exception that a right set up under a grant must clearly appear, and cannot be presumed; and this has not been controverted."

The doctrine, then, is, that a right against the state cannot be "presumed," but must clearly appear, or be "clearly given by inference" or "construction," from the words of the act.

In *New Jersey v. Yard*, 95 U. S. 116, the whole doctrine of the rule of strict construction, whenever applicable, is stated by Mr. Justice MILLER in nearly a single line: "The contract must be clear, and cannot be made out by dubious im-

plications." No amplification can make it plainer. I rest upon it.

The contract in our case does not depend at all upon mere presumption; nor is it "made out by dubious implications;" but it is the clear import of the words of the act. We think the closing paragraph of the opinion in Yard's case may justly, and we trust will be, applied to this: "The implication is of a right to revoke it, and comes from the other quarter, and is one which we do not think exists by fair construction, and which we do not feel at liberty to import into the contract to defeat its manifest purposes."

THE ACT OF 1846 A CONTRACT.

Ever since the organization of the state, there have been in force various general statutes, similar in their provisions, in relation to the location of county seats. They provide for their location by commissioners appointed for that purpose, and for the raising of means to erect the county buildings by the purchase of a large tract of land for the location, and for the division of the land into lots for sale at enhanced prices.

But the legislature, in the exercise of its sovereign right, when it created the county of Mahoning, disregarded the general law in relation to the location of county seats, and proceeded to locate *its* county seat by a special law, and to provide for the means to erect the public buildings by a method of its own enactment, differing essentially from that provided by the general statute.

The first section of the act created the county, and located the county seat at Canfield. The section is as follows:

"SEC. 1. Be it enacted by the General Assembly of the State of Ohio, That so much of the counties of Trumbull and Columbiana as come within the following limits or boundaries be, and the same is hereby erected into a separate county, which shall be known by the name of Mahoning, WITH THE COUNTY SEAT AT CANFIELD, to wit:" [Then follow the boundaries of the county, et. cet.]

Thus the county seat was fixed by law at Canfield, and must thereafter ever remain there until removed by legislative enactment.

Had the matter been left as it stood under the first section, undoubtedly any subsequent legislature could have removed it, for the location would have been fixed by a general law merely, which, whatever incidental benefits individuals might have derived therefrom, would, like all general statutes, have been subject to change at the legislative will. It might have been so left, and the public buildings might have been built by taxation or other means.

So far as regards the creation of the county and the location of the county seat, the act was complete without the eighth section. But that section was added, and added for a purpose clearly expressed in the section. The object sought to be accomplished and the means of its attainment are not left in doubt. The intention is expressed in "words too plain to be mistaken." Read the section:

"SEC. 8. That before the seat of justice shall be considered PERMANENTLY established at Canfield, the PROPRIETORS or CITIZENS thereof shall GIVE BOND with good and sufficient security payable to the Commissioners of said county, hereafter to be elected, for the sum of FIVE THOUSAND DOLLARS to be applied in ERECTING PUBLIC BUILDINGS for said county, and that the citizens of Canfield shall also DONATE A SUITABLE LOT OF GROUND on which to ERECT PUBLIC BUILDINGS."

There was no need of this section to reserve the right of removal; for, without it, the State had that right.

The sole object of its enactment was to procure from the citizens of Canfield ground for the public buildings and means for their erection, and thereby to save the people of the county from taxation for that purpose.

To secure that object, an inducement was offered to the citizens of Canfield. The inducement proposed was—not the location of the county seat in Canfield, for that was already fixed—but was to make that location *permanent*. For a spec-

ified consideration—a price to be paid—that which might otherwise be changed was to "be considered *permanently* established."

It was this *permanency*, and *nothing else*—be it observed—that was offered to the citizens of Canfield as an inducement to do what was desired of them. It was *that*, and that alone, for which the state demanded a specified price in land and money. It was for *that*, and that only, the price was paid. *That* and the price asked therefor, constituted the sole object of the section. *That* was what, in contemplation of the parties, was to be guaranteed by the State. It was regarded by them as valuable. It was the subject matter of negotiation, for which the price was demanded by one party and paid by the other.

Here, then, was a subject matter for a contract. There were parties: there was a consideration: there was something proposed to be done for a consideration: the proposition was accepted, or the condition was performed, by the payment of the price. What more is required to constitute a contract—a contract for the establishment of the county seat at Canfield "permanently"?

This contract arises out of the very *words* of the legislative enactment, without resort to any doubtful construction, and the contract they import against removal arises without resort to "dubious implications."

The contract against the removal of the county seat is not a mere inference,—it is the clear import of the section, no less certain than the legislative creation of the county seat itself.

The county seat, it is true, was not to be permanent—immovable—until the price was paid. It is said this is not an affirmative declaration that it shall be permanent. But it unmistakably implies that it shall become so on payment of the price. It would be a most absurd and "strained" construction to hold otherwise.

In *New Jersey v. Yard*, 95 U. S. 110, where, under a pro-

viso, the section in question was not to go into effect or be binding "until" the company, in a specified manner, signified its assent thereto, it was not questioned but that the proviso imported that the section should take effect upon the prescribed acceptance. So in this case, the enactment that the seat of justice shall not be regarded as permanently established at Canfield "until" a specified bond is executed and accepted, imports an affirmative declaration that it shall be so regarded when that is done. It cannot be understood otherwise. I need not, then, refer to the fundamental principles of the common law to show that this constituted a contract. As between individuals, it would not be doubted. Why should it be where the State is a party, and the contract arises from the acceptance of a proposition in the form of a law?

Suppose there be added to the charter of any corporation this section: This charter shall be regarded as revocable until the corporation pay the State five hundred dollars; or this clause: This charter shall not be regarded permanent until the corporation donate a lot of ground to the county of Mahoning and erect thereon a jail: can it be questioned but that, on payment or performance by the corporatian, the charter would be irrevocable and permanent?

Again, suppose that, in the Binghampton Bridge case, the act had declared that it should not be unlawful for others to bridge the same stream within two miles until the corporation performed some specific act; or that the grant of the exclusive bridge privilege within two miles each way shall not be regarded as permanently granted until the company lay a railroad track on their bridge for the passage of cars: when the company performed the condition, would it not have a permanent and irrevocable charter?

Moreover, suppose the legislature, in analogy to the general law in force relating to the location of county seats, instead of exercising the power itself, had conferred power upon an individual to locate the county seat, provide means to erect

the county buildings, and make contracts in relation thereto, as fully as the power is possessed by the legislature; and suppose that he had located the county seat at Canfield; and then stipulated that it should not be regarded as permanently established there until the citizens of the town give bond for five thousand dollars to the acceptance of the county commissioners for erecting the county buildings, and donate a lot on which to place them. When the required terms were complied with by the citizens, and accepted by the commissioners, could any "legal subtlety" avoid this as a contract for the immovability of the county seat? Clearly not. No more can the contract as it now stands be evaded, without disregarding the manifest intention of the parties, and doing violence to the language used in the act.

In *Commissioners of Lucas Co. v. Hunt*, 5 Ohio St. 496, where donations had been made to procure the location of the county seat at Maumee, SWAN J., in delivering the opinion of the court, said: "It could not have entered into the contemplation of the parties that the county seat, after being once established at Maumee, would in the course of years be removed." Much more, if, as in this case, the donations had been made to secure, not the location of the county seat, but its immovability, it could not have been contemplated that it might be removed at any time. No: the citizens of Canfield acted upon the pledged faith of the State, that, for the consideration demanded, the county seat, located at that place, should be immovable. Neither party contemplated that after the consideration was paid the county seat might be moved at any time. Neither party contemplated that after the contract was executed by the citizens of Canfield the State might keep the consideration and remove the county seat at will. The withdrawal of neither party was contemplated. *Permanency*, both in the consideration and in the location of the county seat, was what the parties contemplated and *stipulated* for. *That* was what they contracted for.

The power of the legislature to contract on behalf of the State is not denied. As said by Chief Justice TANEY in *Ohio Life Ins. and Trust Co. v. Debolt*, 428:

"Contracts are sometimes incautiously made by States, as well as individuals; and franchises, immunities, and exemptions from public burdens improvidently granted, but whether such contracts should be made or not, is exclusively for the consideration of the State."

We have, then, nothing to do with the wisdom of the contract. If the legislature, which was the supreme arbiter of the public policy and "exclusive" judge of what would best promote the public welfare, deemed it wise to contract, for the purpose of securing a stipulated consideration, that a county seat, which would otherwise be movable, should become permanent, the contract, whether prudent or not, thence forward passes under the shield of the constitution from violation by a subsequent statute.

OBJECTIONS AGAINST THE CONTRACT.

I proceed now to notice briefly the considerations which have been urged, so far as I have been advised, against the existence or validity of the contract in question.

1. As before remarked, there has ever been a general statute in force in Ohio providing a mode for the location of county seats. S. & C. Stat. 1386. It provides that the legislature shall appoint commissioners to make the location; and, when not made in a town, that not exceeding seven hundred acres of land shall be purchased for such location, and laid off into lots which are to be sold, with a view to diminish the burden of taxation for county buildings, from the amount realized by the enhanced value of the lots arising from the location of the county seat.

It is claimed that the purchasers of such lots would be as much protected by a contract arising under the general statute, as the citizens of Canfield are under their special statute, against the removal of a county seat located under the general law.

The difference between the two cases, so far from strengthening the defendant's claim, only illustrates the correctness of the position of the plaintiffs.

Purchasers of lots after a location under the general statute, are strangers to the law and the matter of location. They may buy in view of the probable enhanced value of the lots resulting as an incident from the location of the county seat. Such locations are not, however, made on condition that they will buy and pay a fixed price for lots. No consideration is paid by them for the specific location of the county seat; much less upon an agreement that a location which has been made shall be permanent. They are not parties to the location. It is made by the State alone, through the agency of its commissioners, under a general law, and may be removed at any time, because it is purely an *ex parte*, or unilateral transaction. Not so in our case. The legislature, as it had, under the constitution then in force, the conceded and unquestioned power to do, proceeded to locate the county seat, without reference to the general statute, by a special act; and, as we have seen, for a stipulated consideration, guaranteed the permanency of the location so made.

The benefit derived by the citizens of Canfield therefrom did not result from a general statute, or an *ex parte* proceeding of the State: but was secured by a special stipulation of the State made with *them* upon a specified consideration paid by them and appropriated by the State to the benefit of the public.

As has been claimed by the defendants, so we admit, our case *is* an exception from the general policy of the State in regard to the location of county seats. Therein lies the strength of this case. The wisdom of this departure, as before stated, was a matter to be determined by the legislature alone. The legal effect of the special transaction is the only matter now to be considered.

2. Furthermore, it is claimed in behalf of the defendants, that, such is the "poverty" of the language of section 8 of

the act of 1846, it may be made to mean something else than what the ordinary and fair import of its words clearly indicate. To this end it is claimed that the word "permanently" is a word so poor and feeble that, though it may express durability or immovability, it is capable of being twisted so as to mean something short of that.

All we ask is the application of the well settled rule of this Court,—hitherto too much ignored in the progress of this case,—a fair and reasonable construction of the section, in connection with the subject matter which occasioned its enactment. In the light of such a construction, the word in question was clearly used in no other sense than that in which the word "permanent" is defined by Webster, viz: "Continuing in the same state, or without any change that destroys form or character; remaining unaltered or *unremoved;* abiding; durable; lasting; continuing."

In view of the price asked and paid for the *permanency* of the location of the county seat already made at Canfield, it is clear that the word could have been used in no other sense than that the county seat was to remain there "unaltered" and "unremoved" during the existence of the county.

Neither party could have supposed that the citizens af Canfield were to gain nothing by the enactment of section 8, and that the county seat might be moved at the pleasure of the State. In view of the price asked by the State and paid by the plaintiffs, as said by Judge SWAN in *Commissioners of Lucas Co. v. Hunt, supra*, "It could not have entered into the contemplation of the parties that the county seat, after being once established at Maumee [Canfield permanently] would in course of years be removed." Then no such "strained" and distorted meaning can be given to the words used in section 8 as is claimed by the defendants. The natural and ordinary meaning of the words used makes the section comport with the obvious understanding and contemplation of the parties. Every strained sense claimed for them perverts

the section, and makes it a snare to the citizens of Canfield, which surely was not contemplated by them, nor intended by the State; for if the county seat can be moved now, it could have been the next day after the citizens of Canfield had fully complied with the act. Neither party could have supposed that the matter was left open to the perpetration of such a remediless fraud. Nor, upon a fair and reasonable construction of the act, giving to its words their natural, ordinary and obvious meaning, was it so left. The citizens of Canfield, who accepted and complied with the proposal of the State, were not, under the law of the land, left to be robbed by the next or any succeeding legislature.

3. But, as if apprehensive that their construction of section 8 of the act of 1846 would not be regarded as sound, and oppressed with the necessity of accounting for its enactment, the defendants set up the absurd reason therefor, that it was added to the statute as a "limitation" of the first section, to reserve the right of removal.

For that purpose, section 8 was wholly useless. Without it the location made by the first section was *unlimited*, and therefore might be changed at the pleasure of the State.

But the section was not added to the law for a vain purpose. It was most undoubtedly intended thereby to enact an important "limitation" in regard to the location made by the first section. That enactment by the State, on one part, related solely to its *permanency* and the means by which it was to be secured for the benefit of the parties of the other part, and was to take effect on payment of a specified price by the parties of the other part. It was not a mere saving clause by one party to the transaction,—it was something to be accomplished by the united action of both parties. It was not needed to save the right of changing the location. Its sole object was, to obtain a desired end,—land and money,—in consideration of the location being made unchangable. "It was," as said

by counsel for defendant with another view, "in order to prevent the legislature from *undoing* what it had already done." For *that* the price was demanded by one party; for *that* it was paid by the other.

Had all this been done by an agent of the State, endued with unlimited authority in the premises, on the one part, when accepted and performed by the party of the other part, no doubt could ever arise but that a contract for the permanent establishment of the county seat at Canfield had been entered into by the parties.

4. It is urged that no contract was created by the act of 1846, for want of parties capable of making the contract or accepting the grant.

No reply is needed to a quibble suggested in behalf of the defendants upon the words "proprietors or citizens" in section 8, further than that they are used as synonymous terms.

I do not care to follow the various speculations or vagaries put forth in argument on the part of the defendants to defeat the contract on account of the incapacity of the parties described as citizens of a town to enter into it.

It is a sufficient reply to them all, to say that the act was in the nature of a proposition to all the citizens of Canfield: and, at least, as to the persons, being such citizens, who accepted its terms and paid the price asked of the citizens, there can be no dispute of their capacity to accept the proposition and thus become parties to the contract. *Woodruff v. Trapnall, supra.*

Since the consideration demanded has been paid by them and accepted by the State, and the contract has been fully performed on their part, the State is estopped from denying the want or capacity of the parties to the contract from whom it has accepted its performance; for otherwise the State would perpetrate a fraud not tolerated by the law.

The record shows that many of the numerous plaintiffs in this case were persons who united in making the donations

required as the consideration of the contract on the part of the State. Under the Ohio code they may be regarded, for the purposes of this case, as the only parties to it. There was, then, no want of parties, or capacity of parties, on our part.

Moreover, as a further satisfactory answer on this point, I quote from the argument of my brother TUTTLE submitted in the State Court on behalf of the plaintiffs:

"As to the parties to whom the promise is made, the act itself describes them as *proprietors* and *citizens* of Canfield.

"It has been claimed that this description of parties is insufficient, and that there is, therefore, no contract for want of parties. In support of this claim, authorities are cited applicable to the case of a deed by a private person: e. g. *Jackson v. Cory*, 8 John. 385.

"This reasoning does not recognize the difference between the private individual and the legislature.

"The private individual must act by the rules prescribed for his action. The legislature can make its own rules.

"The individual must make promises and grants to persons who already have capacity. The legislature can at the same time make promises and confer capacity. * * *

"It is a legal presumption that a grant carries with it everything in the power of the grantor, necessary to the enjoyment of the grant. Whoever grants a thing is supposed also to grant that without which the grant itself would be of no effect. Broom's Maxims, 463,467, 8; 470, 1.

"The king may make a grant by way of ordinance, without any grantee; as he may appoint that such and such men be incorporated. Com. Dig. tit. Grant, B. 1. 2 Rol. 197, l. 30, 50." See also Bac. Ab. tit. B.; Cro. Eliz. 35; Com. Dig. tit. Franchises, F. 6.

5. I do not comprehend the refinement by which it is claimed on the part of the defendants, that, by reason of a county being a political organization, in which all the people of the state are interested, the location of the county seat is not a subject matter of grant or contract by the state.

A county is a municipal corporation, and a county seat is its place of business. Both are the creatures of the legislature.

"Rightly considered, a county is a mere instrumentality,

a means in the hands of the legislative power to accomplish its lawful purpose; and to this extent a creature in the hands of its creator, subject to be molded and fashioned as the ever varying exigencies of the State may require." Per RANNEY, J. in *C. W. & Z. R. R. Co. v. Com'rs Clinton Co.*, 1 Ohio St. 89. To the same effect is *Laramie Co. v. Albany Co.*, 92 U. S. 307.

Of course between this creature and its creator there can be no contract relation, for there cannot be any reciprocity of stipulation on the part of the creature. But it does not follow that the creator, in molding and fashioning the creature to meet the exigencies of the state and the county, may not, in the exercise of its sovereign power, enter into contracts with, and make grants to, persons who are both competent to contract and perform contracts independent of any power conferred by the legislature.

Undoubtedly the legislature, in creating a county, to promote the welfare of the people, might provide by contract with individuals for the opening and construction of a highway through it, and for its permanent location on a specified route, if, as a consideration therefor, such individuals would give the land for it and construct the road.

The privilege of having the road on such particular route might be worth to the individuals all it would cost them. Nor would it be any less a privilege or right secured to them because all the people of the county or state might also have a practical interest in the road. The privilege would unquestionably be something of value, and therefore clearly a subject matter of contract or grant.

Nothing is more common than the building of roads, bridges and ferries at specified places under contracts by the State with individuals and corporations; and no one can suppose that, in such cases, the legislature can, in violation of its contract, change or annihilate them at its own pleasure.

In the present case, the *privilege* of having the county seat permanently located at Canfield, was regarded as something

for which its citizens were willing to assume the entire burden of erecting the county buildings, and thus relieve the county of that expense. For this same privilege, transferred to Youngstown, its citizens offer a building site and one hundred thousand dollars. It is, therefore, absurd to deny that such a privilege, being in the sole and exclusive control of the legislature, cannot be the subject matter of a grant or contract.

Nor does it make any difference that all the people of the state may have an interest connected with such subject matter of a contract; for the legislature, endued by them with the power, may deal with that interest as, in its judgment, will best promote their welfare. The legislative power to make the contract and its binding force on subsequent legislatures, are, however, different questions from that relating solely to its subject matter.

6. The power of the legislature to make the contract in question, is conceded by counsel for defendants; but it is claimed that the contract is of such a nature that it is not protected by the constitution from being impaired by subsequent legislatures.

Much of the confusion thrown around this question will be dispelled by keeping in mind a clear idea of just what was in fact the subject matter of the grant or contract in question.

So long as the county exists as an auxiliary of the state in the business of municipal government, there must always be a *place* at which it transacts business, or exercises the functions of government. It was merely the perpetuity of the location of such place of business which was the subject matter of the contract or grant. Such *place* constitutes no part of the *government* either political, municipal or police. All its functions are the same whether its place of business is located on the east or west side of a street, or in one town or another. The place *where* the county seat is located no more diminishes any municipal or police power of the government than does

the kind of buildings in which the county business is done, whether they be stone or brick. All the political, municipal, police and judicial functions of the government are the same whether discharged in one place or another. Since, then, the subject matter of the contract related solely to the *place* of business, and not to the business itself,—to the *location* of the government, and not to the government itself,—there is little or no foundation for the argument based on the idea that the contract was a diminution or yielding up of the unalienable powers of civil government. At most the legislature merely parted with the right to change the *location* of the county government, and not with any power essential to the government itself in any of its various departments.

Such, then, being the nature of the contract,—there being in 1846 no limitation on the power of the legislature to make it, except what is claimed to be implied as necessary to the preservation of the government,—it cannot, for want of power, be excluded from the protection afforded by the constitution to other contracts made by a state with its citizens.

The case of *East Hartford v. Hartford Bridge Co.*, 10 How. 511, is much relied upon by defendants. I fail to see how it can afford them any aid. I have already stated that no contract relations can exist between a state legislature and a municipal corporation created by it as a mere auxiliary of the government. The East Hartford case turned solely on the principle which distinguishes between public and private parties and interests. The subject matter of the case related only to public highways. All the parties interested were public bodies. No private parties, nor private interests or privileges, were involved.

It is said in the opinion, page 535:

"There is no private interest or property affected by this cause, but only public corporations and public privileges. It may be otherwise in case of private bodies, or individuals, or of private property granted or acquired. The legislature

might not be justified to revoke, transfer, or abolish them on account of the private character of the party or subject. *Pawlet v. Clark*, 9 Cranch, 292; *Terrett v. Taylor*, ibid. 48-50. But everything here is public." * * * Again, page 536:

"The public character of all the parties to this grant, no less than its subject matter, seems, therefore, to show, that nothing in the nature of a contract, with terms to be fulfilled or impaired like private stipulations, existed in this case so as to prevent subsequent interference with the matter by the legislature, as the public interests should require."

These quotations show that the case sustains rather than weakens that of the plaintiffs. They are private persons seeking the protection of private rights and interests.

It is true, as urged by defendants, that the county seat, as such, could be used only for the public business or purposes. But this is not at all inconsistent with the private right in the *place* of business granted by the legislature. Had the legislature bought or rented grounds and buildings for the same purpose, with various restrictions and reservations in favor of the other party, I apprehend it could not repudiate any part of such a contract made with private persons, although the grounds and buildings were also to be used for public purposes.

The contract in question in this case, though made with a view to the public interest and for public purposes, was not made, as in the East Hartford case, between public corporations and for public purposes only; it was made by the legislature to promote the public interest on the one part, and by private persons to promote their private interests on the other part.

The legislature, for a specified consideration to be paid by private persons, contracted that the county seat, located at Canfield, should remain there permanently; and, when the contract was executed by the private parties, it operated as a legislative grant to them of the privilege of having the county seat in their town.

That this *privilege* was something of value, has been al-

ready shown. Such privileges, when granted by the government to and vested in individuals, are franchises, and are always recognized in law as private property. I quote from 3 Kent's Com. 12 Ed. 458:

"Another class of corporeal hereditaments are franchises, being certain privileges conferred by grant from government, and vested in individuals. * * * They contain an implied covenant on the part of the government not to invade the rights vested, and on the part of the grantees to execute the conditions and duties prescribed in the grant. Some of these franchises are presumed to be founded on a valuable consideration, and to involve public duties, and to be made for public accommodation, and to be affected with a *jus publicum*, and they are necessarily exclusive in their nature. The government cannot resume them at pleasure, or do any act to impair the grant, without a breach of contract."

Nor does it matter that a franchise may have no exchangable value. Though it be of such a nature that it cannot be sold, attached or levied upon for debts, yet, that it is a grant within the meaning and protection of the constitution, is a principle too elementary to need the citation of authorities. Cases of a franchise or privilege of a special rate of taxation, or of special exemption from taxation, are common and familiar examples of this class.

The privilege acquired by the plaintiffs from the State was, then, *property*, an object of value, which, even the State Court declared, if the contract existed, might be asserted and protected in a court of justice, by the injunction sought in this case; and, in the Binghampton Bridge case, the same doctrine has been established in this court.

The plaintiffs, then, have no occasion to dispute the rule announced by Chief Justice MARSHALL in the *Dartmouth College case*, 4 Whea. 629:

"The provision of the constitution never has been understood to embrace other contracts than those which respect property, or some object of value, and confer rights which may be asserted in a court of justice."

For, in regard to all contracts, the principle stated by Mr.

Justice SWAYNE in *Farrington v. Tennessee*, 95 U. S. 682, is recognized that "spotless faith in their fulfillment honors alike communities and individuals."

The doctrine is clearly stated by Mr. Justice MILLER in *New Jersey v. Yard*, 95 U. S. 114:

"It has become the established law of this Court that a legislative enactment, in the ordinary form of a statute, may contain provisions which, when accepted as the basis of action by individuals or corporations, become contracts between them and the State within the protection of the clause referred to of the Federal constitution.

"The difficulty in this class of cases has always been to distinguish what is intended by the legislature to be an exercise of its ordinary legislative function in making laws, which, like other laws, are subject to its full control by future amendments and repeals, from what is intended to become a contract between the State and other parties when the terms of the statute have been accepted and acted upon by those parties. This has always been a very nice point; and, when the supposed contract exists only in the form of a general statute, doubts still recur, after all our decisions on that class of questions.

"These doubts are increased when the terms of the statute relate to a matter which is in its essential nature one of exclusive legislative cognizance, and which at the same time requires money or labor to be expended by individuals or corporations. In such cases, the legislature may be supposed to be merely exercising its power of regulating the burdens which are to be borne for the public service, in which case it could be modified from time to time as legislative discretion might determine; or it might be a contract founded on a fair consideration moving from the party concerned to the State, and which in that case would be beyond the power of the State to impair."

We think the application of the principles recognized and settled in that case will determine the case in hand in favor of the plaintiffs. For it is very clear that section 8 of the act of 1846 was not "intended by the legislature to be an exercise of its ordinary legislative function in making laws." Independent of the proposition to the citizens of Canfield, it was a wholly nugatory affair; but as containing "provisions"

to be "accepted as the basis of action by individuals," it had an effective and manifest purpose.

Nor could the legislature "be supposed to be merely exercising its power of regulating the burdens which are to be borne for the public service." On the contrary, it thereby undertook to relieve the public from a burden, not by a general law, but by a special transaction with private parties: whereby, for "a fair consideration moving from the party concerned to the State," a thing of value, but of transitory character, was, by legislative enactment, to become fixed permanently, and thereby secured to such private parties.

Such is our case that we may most confidently adopt the language of the opinion in Yard's case page 115:

"It does seem as if the legislative intention was to make a contract in the same manner, and on the same terms of equal obligation, as other contracts are made, and not to pass a statute which it could repeal or amend the day after it was signed [performed by the parties]. * * *.

"Can it be believed that it was intended by either party to this contract that, after it was signed [performed] by both parties, one was bound forever, and the other only for a day? That it was intended to be a part of the contract that the State of New Jersey [Ohio] was, at her option, to be bound or not? That there was implied in it, when it was offered to the acceptance of the company [citizens] the right on the part of the legislature to alter or amend it at pleasure?"

DECISION OF THE STATE COURT.

But, as I understand it, the points chiefly relied on by the defendants, are those made in the opinion of the State Court in deciding this case. 26 Ohio St. 618.

After stating the question, (which statement contains the singular blunder,—evidently not of the printer, and certainly not of the plaintiffs,—that "The plaintiffs claim that the act of 1846 is unconstitutional, because it is in the nature of a *contract*,") the Court proceeds to give what it denominates as "three good reasons" for its decision: 1, The contract could not be made: 2, It never was made: 3, It was fulfilled.

"The kettle case" was not more complete. Of course each "reason," if "good," is conclusive. But, as if the opposite contingency was deemed quite possible as to the first, it is wisely provided for in the second, and for the second in the third: that is,—the legislature could not make the contract; or, if it could, it did not; or, if it did, it was fulfilled. But, in the effort to reach a solid foundation, neither reason ever found the rock. On the contrary, each step mired deeper in the sand. I quote each of the reasons in full:

FIRST REASON.

"1. The power to establish and remove county seats is one which cannot be parted with by legislative contract. It is not the subject of contract. No case or authority is cited by counsel, and it is presumed none can be shown, sustaining or enforcing any such contract; while several cases are adduced (4 Blackf., 208; 8 Texas, 297; 11 Ill., 336; 13 Ib. 456) to show that it is a contract which there is no legislative power to make."

It is doubtless true, that the four cases cited by the Court were "adduced" by the defendants, "to show that it is a contract which there is no legislative power to make;" but a *reading* of the cases would have disclosed the weakness of the support which they afford to the proposition adopted by the Court. Neither one of the cases turned upon the point in question. Nor does the Court cite them as authority or precedents, but only refers to them as cases "adduced." They do maintain the doctrine, that counties are public corporations, created by and ever under the control of the legislature, and are not contracts within the purview of the constitution; that the location of county seats is a matter within the sovereign power of the legislature; and that, in the absence of a contract to the contray, the loss of benefits, incident to the location of a county seat, occasioned by its removal, is not the subject of legal redress. All which we have not disputed.

Possibly something may be found in the cases analagous to the class of cases in which the location of county seats may have been made by the legislature at a particular town on condition that the citizens thereof donate land and money for the public buildings. In such cases, when the condition is per-

formed, it becomes a contract to locate the seat of justice according to the stipulation; and it may be conceded that such a location would be a full performance of the contract, and that the legislature would not be bound against a removal.

But it is quite a different thing, where, as in this case, the county seat has been located, and the contract is not for the location thereof; but is that a location already made shall, for a consideration, become permanent. In the one case the contract is merely for the *location* of a county seat without other limitation:—in the other, it is simply a contract against the *removal* of the county seat. The difference is not one of principle, but in the facts to which the same principle is applied. The confusion with which it is sought to envelop the case is dispelled, and all difficulty cleared away by keeping in mind simply the precise nature and terms of the contract under consideration.

The case in the fourth of Blackford, *(Armstrong v. Board of Commissioners,)* is the one chiefly relied on by the defendants. The contract relied on in that case was made by the commissioners appointed to relocate the county seat. The court held that it was neither made nor authorized to be made by the legislature, and was, therefore, of no effect. But that cannot be said of our case.

It was also conceded in that case, that a provision in the act for relocating the county seat, that after the completion of the public buildings at the place designated, "the same shall be *forever* thereafter the permanent seat of justice of said county," did not conclude a subsequent legislature. So we say. There was no contract, and therefore no private rights intervened, except what were merely incident to a public law, and such laws are ever subject to legislative change.

The other cases are even less in point than the Indiana case. They *assume* that whatever was done, on which the actions were based, was understood by the parties to be done under a law subject to be changed, Whatever *dicta* they contain

looking in that direction, neither case reaches the point to sustain which they are cited.

Nor can it be supposed that the court would have rested its decision *solely* on a reference to these cases, had it not "presumed" that no case could be cited to sustain "any such contract."

It was entirely unnecessary to go to Texas for precedents, for it cannot be said that the Supreme Court of Ohio has had no experience in "any such contract,"—not such contracts specifically, but generically,—depending on the same principles—precisely "such," or like, contracts. Doubtless the Ohio cases would have been "adduced" as not "supporting any such contract," had they not been overruled by this court.

The power to levy taxes surely is no less a police power—a sovereign power—a function of civil government—than the power to fix the place *where* the business of levying and paying taxes shall be done.

It never has been and never will be contended that the latter is of a higher grade than the former. We concede enough, when we admit that they are kindred powers, and that a contract in respect to one is such in its nature that it requires the exercise of the same kind of power that it would to make a contract in regard to the other; so that, indisputably, "any such contract," being of the same family, depends upon and must be controled by the same principles.

Hitherto this court has not distinguished between the different branches of the same family, but all cases coming within the same principle have fared alike.

No matter whether the contract related to the taxing power; the ferry, bridge or highway power; or municipal police power; neither the subject matter of the contract, nor want of legislative power to make it, has been deemed sufficient to withdraw it from the protection of the constitution.

That ferries, bridges and roads pertain to the police and civil government powers of the state quite as much as the lo-

cation of a county court house, cannot be questioned. Nor can it be disputed but that everything relating to them may be the subject, and within the power, of legislative contract. I need only refer to the Binghampton Bridge case as to this matter.

The *Slaughter House Cases*, 16 Wal. 36, seem to settle the question that matters pertaining to the police power of the state may be the subject matter of contract, and within the contracting power of the state. It would seem that the question is made to turn upon the point whether the subject matter of the contract is within the exclusive control of the legislature. If so, in the exercise of its sovereign power, it may make any contract in relation thereto. Since, then, the legislature might "prescribe and determine the locations where the business of slaughtering for a great city may be conducted," it was held that the legislature might by contract grant exclusive privileges in relation thereto.

The power of the legislature to prescribe the locations where the public business of counties must be conducted, is equally certain and undoubted. If a contract, as in those cases, granting exclusive privileges in regard to the location of slaughter houses, affecting a large territory, and more than five times the number of inhabitants contained in the county of Mahoning, may be made, surely an exclusive privilege in the location of the place where the county business of a county is to be conducted, must be equally a subject matter of contract, and within the legislative power to contract. The power may be indiscreetly exercised in either case; but it does not, therefore, follow that it does not exist. The unlimited power of the legislature of Ohio in 1846 to contract, is unquestioned. That point was settled in *Matheny v. Golden*, 5 Ohio St. 361. We therefore claim that the principles settled in the Slaughter House cases are decisive of the point now under consideration in favor of the plaintiffs in this case.

The *State Bank of Ohio v. Knoop*, 16 How. 369, was an

Ohio case, in which the State Court seems to have taken about the same view in regard to the taxing power of the state, that is taken in this in regard to the location of a county seat; but this court reversed the judgment of that court, and sustained the power of the State to contract in relation to taxes. The same claims were set up in that case which are made in this. In the opinion, page 389, it is said by Mr. Justice McLEAN:

"But it is said the State cannot barter away any of its sovereignty. No one ever contended that it could.

"A State, in granting privileges to a bank, with a view of affording a sound currency, or of advancing any policy connected with the public interest, exercises its sovereignty, and for a public purpose, of which it is the exclusive judge. * * Having the power to make the contract, and rights becoming vested under it, it can no more be disregarded nor set aside by a subsequent legislature, than a grant for land. This act, so far from parting from any portion of the sovereignty, is an exercise of it. * * * It must be admitted that the State has the sovereign power to do this, and it would have the sovereign power to impair or annul a contract so made, had not the constitution of the United States inhibited the exercise of such a power."

In *Ohio Life Ins. and Trust Co. v. Debolt*, 16 How. 416, the same doctrine was announced by Chief Justice TANEY. Speaking of the power of the States, page 428, he says:

"They may, if they deem it advisable to do so, exempt certain descriptions of property from taxation, and lay the burden of supporting the government elsewhere. And they may do this in the ordinary forms of legislation or by contract, as may seem best to the people of the state. There is nothing in the constitution of the United States to forbid it, nor any authority given to this Court to question the right of a State to bind itself by such contracts, whenever it may think proper to make them. * * This power may be indiscreetly and injudiciously exercised. * * Yet, if the contract was within the scope of the authority conferred by the constitution of the state, it is like any other contract made by competent authority, binding upon the parties. Nor can the people or their representatives, by any act of theirs afterwards, impair its obligation. When the contract is made, the constitution of the United States acts upon it, and deelares

that it shall not be impaired, and makes it the duty of this Court to carry it into execution. That duty must be performed."

That the learned Chief Justice regarded this doctrine as applying to any and all matters coming within the exclusive power of the legislature, like that of locating a county seat, is clearly evinced by what he says further on, page 435:

"And neither the right of taxation nor *any other* power of sovereignty which the community have an interest in preserving, undiminished, will be held by the Court to be surrendered, unless the intention to surrender is manifested by words too plain to be mistaken."

The defendants rely upon this clause in the opinion for a rule of construction. It is equally good to sustain the power of the legislature to make the specific contract in question. The case settles the principle which unmistakably sustains the power to make the contract.

In *Matheny v. Golden*, 5 Ohio St. 361, it was held that the legislature was competent to exempt, for a valuable consideration, specific lands entirely from taxation. The same doctrine has recently been sustained by this Court in *The North Western University v. The People ex. rel. Miller.*

Can it be, that the legislature had the well settled power to contract with the citizens of Canfield, that, if they would construct the county buildings, their land in that town should permanently remain thereafter untaxed for state purposes, and yet, could not grant to them, for the same consideration, the lesser privilege of having the county seat located permanently in their town?

The decisions of this Court make no such discriminations, and, therefore, have never fallen into any such inconsistency.

Finally, as an unanswerable refutation of the first point in the opinion of the State Court in this case, and of each of the cases adduced to sustain it, I respectfully ask that the vigorous opinion of BRINKERHOFF, J. in deciding the case of

Matheny v. Golden, 5 Ohio St., so far as it relates to the question in hand, beginning on page 366, may be read.

That case was decided after the Knoop and Debolt cases had been reviewed in this court, and followed the rulings of the reviewing court, as, with the exception of the present case, the Supreme Court of Ohio ever has done, since its doctrines in those cases were overruled here.

SECOND REASON.

"2. Nothing is better settled than the principle that, in order to make a legislative contract or grant, the words of the act must be certain and direct, and must clearly show the legislative intent. The contract or grant cannot be inferred, or made to rest in implication. See 16 Howard, 416; 1 Ohio St. 574; 1 Ib. 574; 3 Wallace, 75; 11 Pet. 420. Such is by no mmeans the language of the act of 1846. It merely creates the county, "with the county seat at Canfield, and then provides that it shall not be "considered as permanently established at Canfield," until the donation is made. Especially ought this rule of strict construction to be applied in a case like the present, where it must be conceded that the exercise of the power, to say the least, is of doubtful constitutionality."

As to the second point, I have but little to add to what I have already said in the beginning of my argument. I do not claim that a legislative contract can be made by a mere presumption; nor that it can rest upon an inference or implication, unless the inference or implication clearly arises out of the words of the act.

If the power of the legislature to make the contract were of "doubtful constitutionality," I do not comprehend how it can change the rule of construction. It is true, it might be easier to settle a constitutional question by an arbitrary construction that no contract exists, and, therefore, no such difficult question would arise. But whether constitutional or not, the same rule, of a fair constrnction, applies. The validity of the contract is another matter.

It is undoubtedly very easy to say that there was no contract arising out of the act of 1846, because "It *merely* creates the county, 'with the county seat at Canfield,' and then provides that it shall not be considered as 'permanently established at Canfield' until the donation is made." Yes, and it "by no means" follows that a contract did not arise thereon. The

language clearly imports "merely" a guaranty, that, upon payment of the price demanded, the county seat shall remain permanently where it was then located. Otherwise section 8 of the act was a fraud upon those who paid the price; for surely they had the right to suppose that they had gained something from the state for what they had paid; which they did not, if what is claimed be true, that the State might keep the price, and remove the county seat the next day after it was paid. This was no more contemplated by the parties, than it was that the citizens of Canfield might resume the consideration paid by them, at their pleasure.

But few of the cases of this class, in which the contracts were sustained by this Court, could have stood the arbitrary construction applied to this case by the State Court; though they might have been as easily disposed of by "merely" construing them otherwise. I might cite many, but will refer to but one. In the Binghampton Bridge case, had the rule of construction been applied as it was in this case, another result must have been reached; for, with more propriety, it might have been said: the statute "merely" granted a charter for the bridge, and then prohibited others from building a bridge within two miles. It did not covenant that it would not grant a charter for another bridge within those limits.

But this Court did not so easily dispose of the case. It held that by a *fair* construction of the law, it imported a covenant not to charter another bridge within the specified distance; for the Binghampton bridge had been built on the faith that it should not be ruined by another built within the two miles. So in this case, the citizens of Canfield paid the price asked by the State on the faith expressed, or clearly imported, in the words of the act of 1846, that the location of the county seat was thereby secured at Canfield "permanently."

THIRD REASON.

"3. If we concede the power, and concede that the language of the act of 1846 sufficiently shows an intention to exercise it, we do not think the contract is violated, or its validity impaired by the act of 1874. By the word "permanently," as used in the

act of 1846, we do not understand that the county seat was to remain FOREVER at Canfield. The word is surely susceptible of a different and narrower meaning. "Permanently established," as used in the act, simply means "established as other county seats are established." Until the donation should be made, or the Commissioners provided for in the general law for locating county seats in new counties should act in the matter, the seat of justice was PROVISIONALLY or TEMPORARILY established at Canfield, but subject to be changed by future legislation. If, therefore, we regard this as a contract, it has been fulfilled on the part of the State. The supposed contract was that the citizens should make the donation in consideration that the county seat should remain at Canfield until removed by subsequent act of the legisture. The donors have had thirty years enjoyment under this alleged contract, and I suppose when the county seat comes to be removed that their property will revert to them again. I do not see on what ground they can justly complain. If there was a contract, they have had its full benefit."

Whatever effect these concluding remarks may have as a solace for the "strained construction" and "subtlety" of reasoning on which the opinion is based, they cannot be regarded as having anything to do with the pending question; for there is no pretense that the matters alluded to constitute any element of the contract, the existence of which is the only matter in dispute. Thrice "thirty years' enjoyment" would neither establish nor defeat it. Nor is the contract dependent upon or affected by any reversionary interest of the parties. It is true, these matters might bear upon the amount of "benefit" derived under the contract by the parties; but nothing in the case called upon the Court to state an account between them; nor was it authorized to terminate the contract upon any adjustment of the benefits derivable therefrom; for, as we have seen, the wisdom or policy of the contract was not a matter within the legitimate consideration or control of the Court.

But in case of a removal, it is said—or rather *supposed*—in regard to the citizens of Canfield, who complied with the act of 1846, "that their property will revert to them again." Is it meant that the public buildings, erected with their money, are "their property," and will revert to them? This strange idea sometimes seems to find its way into the case. But I *will* not "suppose" that it was so misunderstood by the Court. And yet, nothing else but the public buildings, including the land on which they stood, remained to revert; for into *them*

"their property" had passed and vested in the county. "*Their property*," under the mutations resting solely on the faith of the act of 1846, consists only of the franchise or privilege sought to be destroyed by the act of 1874; and the act makes no provision for converting *that* to something which can revert to the "donors." As the case stands, there can be *no* reversion to them. The most that can be claimed, is the possibility, that, through the perfidy of the State, the grantor of the land may recover to himself alone the whole property, and leave the other contributors remediless. If such a reversion were possible, "I do not see" how it affords any aid to the decision of the Court, nor why the other citizens of Canfield may not still "justly complain." But this part of the opinion may "justly" be regarded as merely *obiter*. I pass, therefore, to the consideration of what is given as the third view of the Court.

We do not contend that the word "permanently" in the act of 1846 was used in the sense of "*forever*," if by that word anything *more* is meant, than so long as the county remains unchanged, or *beyond* the appropriation of the plaintiffs' rights, duly made on compensation to them, by the legislative exercise of the power of eminent domain. In truth, the word "forever" has no more force than the word "permanently," for either must be understood to have its natural meaning, as connected with the subject matter, to which it is, in the particular instance, applied. Because a word may, therefore, in a sense, be susceptible of different meanings, it does not follow that a meaning can properly be given to it, which, in the connection in which it is used, is purely *arbitrary;* and no subject-matter will warrant any other meaning than that which is its *natural* one in the connection in which it is used; nor can it be—though contrary to the view of the Court—that the "nature of the subject matter," whatever it may be, *ever* "requires" any other.

It is quite apparent that the Court found a difficulty in disposing of the words "permanently established" without giv-

ing to them a strained, unnatural and arbitrary meaning. "It simply means," they say, "established as other county seats are established," and mark the words as quoted, I do not know from what; surely not from the act of 1846. That act had no relation to the general law for establishing county seats. It is wholly special in its character. The words "as other county seats are established," are "simply" interpolated. Nothing in the context or subject matter warrants it.

"Until the donation should be made," the Court say, the county seat was to remain at Canfield, "but subject, as all other county seats were subject, to be changed by future legislation." So we say. But the question is, how did the matter stand *after* the donation was made? Was that to work no change? They say, in effect, none whatever; that the county seat still remained subject to be changed at the pleasure of the legislature. What need, then, if no change in the condition or rights of the parties was contemplated, to say anything about it? Was it to gain from the citizens of Canfield the county buildings by a false show of a permanent benefit secured to them? No one claims *that*. Can it be that there was a contract, and that it was really what the Court say it was: "that the county seat should remain at Canfield, until removed by subsequent act of the legislature?" What, then, were its citizens called upon to pay $5000 for? Why talk about "permanently" establishing the county seat at Canfield, if nothing of the kind was intended? The truth manifestly is, that the parties contemplated something more than to make the *absurd* contract that, for $5000, and a piece of land, the county seat should remain at Canfield *permanently*—until moved away! Absurd, I say, because, if such was the contract, the State guaranteed nothing,—the citizens of Canfield gained nothing,—and the contract really was, that there should be no contract. And yet this is the unmeaning version given to the contract. But, in order to come to that, words not in the act, nor that can fairly be implied from it, must be insert-

ed. This, I submit, is an unwarranted "legal subtlety." As said in the Binghampton Bridge case:

"It is not the duty of the Court, by legal subtlety, to overthrow a contract, but rather to uphold and give it effect; and no strained or artificial construction is to be applied to any part of it."

Evidently the third point is merely an effort to explain the words of the act, which, in the second point, were held not to be a contract; and to get clear of the words actually used, it was found necessary to interpolate others, to annihilate their force.

The act contains no intimation of a right of removal, at the will of the State, being reserved; nor can such a reservation be inferred from the language of the act. It cannot be made to appear without interpolating words not found therein. Such a reservation is clearly inconsistent with the words of the statute, and the plain intent of the parties. The language of Mr. Justice SWAYNE, under similar circumstances, in *Farrington v. Tennessee*, 95 U. S. 689, forcibly applies to this case:

"Such is the natural effect of the language used. The most subtle casuistry to the contrary is unavailing. Under such a contract between individuals, a doubt could not have existed. It may as well be said the power is reserved to tax anything else, as further to tax the shares. We cannot so hold, without interpolating into the clause a term which it does not contain. This we may not do. Our duty is to enforce the contract as we find it, and not to make a new one."

It comes to this at last, upon the opinion of the Court, either that there was no contract, or that, if there was, it contained a right of revocation. The contract and its purpose are clearly manifested by the words of the act. It does not rest upon mere implication. But the right to revoke rests solely upon presumption.

We invoke the application of the closing paragraph of Mr. Justice MILLER in Yard's case, to our contract:

"The implication is of a right to revoke it, and comes from

the other quarter, and is one which we do not think exists by fair construction, and which we do not feel at liberty to import into the contract to defeat its manifest purpose."

As bearing upon this point, and in reply to another, cognate to it, put forth in the progress of the case, and in some of the cases "adduced," that, in contracts with the State, it must be *assumed* they were made with the understanding that the State could not part with its power of revocation, I will conclude what I have to say upon the objections urged to the contract in question, by quoting from the opinion delivered by Judge BRINKERHOFF in *Matheny v. Golden*, page 370, upon a legislative contract alike in principle to the one under consideration:

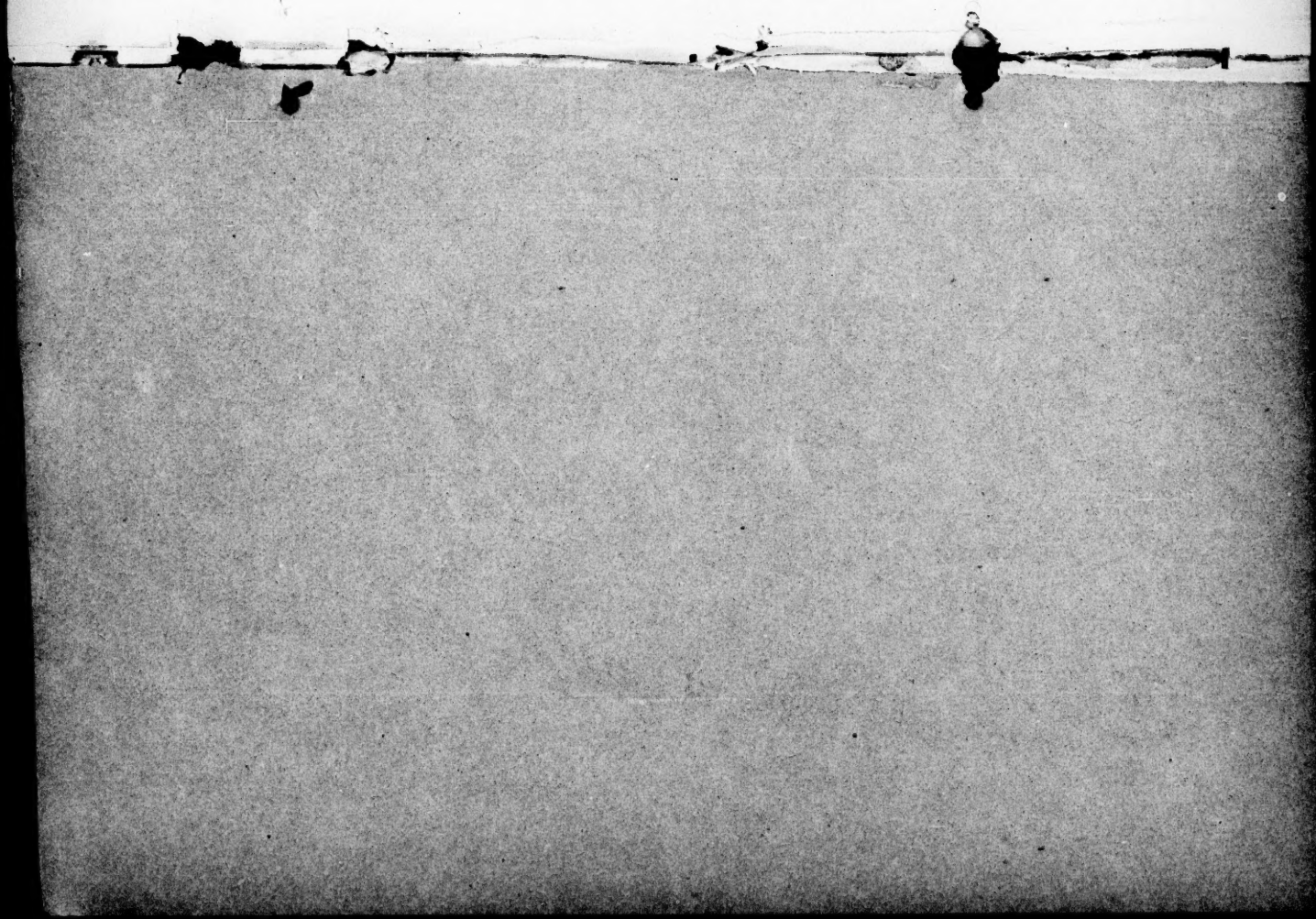
"In attempts which have been made to vindicate the recent legislation of the State bearing on the subject of contracts like that we are now considering, it has been *assumed* that the legislature could not by contract bind the State permanently to exempt any given property from taxation; and it is thence argued that this incapacity must have been understood by those who at any time may have contracted with the State; that they therefore contracted in full view of this supposed incapacity—in full view of the implied reserved right of any subsequent legislature to annul what its predecessors had done; and that thus the reserved right in one of the parties to alter or annul the contract at pleasure, became and was a part and parcel of the contract itself. Now, this argument is grounded on a subtlety which has never been recognized by the legal profession of our country, and was unknown to the jurisprudence of Ohio for the first half century of its existence, * * * It makes words, used in stipulations on the part of the State, mean something wholly different from what the same words mean when employed to express the engagements of the party *contracting with* the State. In the mouth of the lessee, *forever* means *always*. In the mouth of the *State*, it means *just so long as I please, and no longer*. Indeed we have no right to go back and suppose that the parties understood something besides that which appears on the face of the contract; it is but rational and just to suppose that both parties understood their words to mean just what they said, and that, under the superincumbent and inexorable prohibitions of the constitution of the United States, they were mutually bound to their exact, faithful, and perpetual fulfillment. The

contrary argument is redolent with the odor of repudiation; is rife with the very mischief which it is the special design of the 10th section of the 1st article of the constitution of the United States to prevent; is condemned by the morality of the world, and can find, we trust, no DURABLE resting place in courts of justice."

That the act of 1874 impaired the obligation of the contract, I do not discuss; for, unless it can be defeated on some one of the grounds put forth, I do not understand that it is disputed.

Though the contract be violated by legislative enactment through a vote of a majority of those who *then* voted in Mahoning county, still, the principle in regard to contracts, that "Spotless faith in their fulfillment honors alike communities and individuals," cannot be evaded. For the protection of individuals and minorities, it was wisely embodied in the constitution of the United States, and has ever been sacredly enforced by the highest tribunal created by it. To that tribunal the plaintiffs have come; and, relying upon the principles settled by it, ask the protection secured to them by the constitution.

LUTHER DAY,
OF COUNSEL FOR PLAINTIFF.



Supreme Court of the United States.

EBEN NEWTON ET ALS.

VS.

THE BOARD OF COUNTY COMMISSIONERS,
OF MAHONING COUNTY, OHIO.

ARGUMENT FOR DEFENDANT.

—BY—

T. W. SANDERSON.

News Print, Youngstown, Ohio.

RECORD.

THE STATE OF OHIO, } In the Court of Common Pleas.
MAHONING COUNTY, }

Eben Newton, Warren Hine, Darius J. Church, Judson W. Canfield, Pierpont Edwards, Mathias Swank, Peter Gee, George F. Lynn, Henry Van Hyning, M. D. Laney, E. R. Rogers, Ira H. Bunnell, Loverayne L. Bostwick, Robert S. Hollis, George Rupright, Cornelius Curry, William S. Anderson, Horace B. Brainerd, William H. Clark, Seth W. Brainerd, Ensign Newton, James A. Kirk, John H. Clewell, Charles N. Schmick, Ansel D. Wood, Winfield M. Caldwell, Philip Simon, George Tow, William Schmick, Comfort S. Mygatt, Giles Van Hyning, William H. Schmick, Emery C. Swank, George H. Hollis, Ensign D. Lynn, A. G. Arnold, George W. Shelhorn, John Dodson, Charles French, Isaac W. Kirk, Jared Huxley, George C. Mygatt, Chauncey R. Fowler, Robert Manchester, William G. Corll, Jacob Resch, Samuel K. Crooks, Hugh A. Manchester, James M. Caldwell, Hosea Hoover, William Wetmore and Jackson Truesdale, Plaintiffs.

VS.

The Board of County Commissioners of Mahoning County, Ohio, who are at present by name Joseph M. Jackson, Jonathan Schillinger and Sheldon Newton, Defendants.

PETITION.

The plaintiffs who for themselves as well as for three hundred other citizens of the County of Mahoning, whom it would be impracticable to bring before the court, on account of their great number, and who have a common interest with them in the litigation herein, complaining of the

defendants, the Board of County Commissioners of Mahoning County, Ohio, say—

1. That they now are, and for a long time have been citizens of the township and town of Canfield, in said County of Mahoning, owning real and personal estate therein, and doing business thereat.

2. That on and for a long time prior to the 16th day of February, A. D. 1846, the townships of Poland, Coitsville, Boardman, Youngstown, Canfield, Austintown, Ellsworth, Jackson, Berlin and Milton, comprised part of the organized County of Trumbull, and in the State of Ohio, and that the townships of Smith, Goshen, Beaver, Green and Springfield, comprised a part of the organized County of Columbiana, in said State.

3. That on the said 16th day of February, A. D., 1846, the General Assembly of the State of Ohio, in due form of law, by an act then duly passed, entitled "an act to erect the County of Mahoning," whereof a copy is hereto annexed, as exhibit "A," and made a part hereof, erected, formed and created from and of the townships aforesaid, the present County of Mahoning, and established the Seat of Justice therefor at the village and center of the township of said Canfield.

4. That the said General Assembly, by the eighth section of said act, erecting and creating the said County of Mahoning, which is in the words and figures following, to-wit:

"*That before the Seat of Justice shall be considered permanently established at Canfield the proprietors or citizens thereof shall give bond with good and sufficient security, payable to the Commissioners of said County hereafter to be elected, for the sum of five thousand dollars to be applied in erecting public buildings for said County, and that the citizens of Canfield shall also donate a suitable lot of land on which to erect public buildings, permanently establishing and locating said Seat of Justice at Canfield upon the compliance by citizens of said Canfield, of the terms and conditions expressed in said eighth section of said act as hereinafter stated.*"

5. That in pursuance of the foregoing enactment Eben Newton, one of the plaintiffs, joined with his wife, Mary S. Newton, both then and now residents and citizens of said Canfield, on the 5th day of October, A. D. 1846, by deed duly executed and acknowledged, did on behalf of said citizens and proprietors of said Canfield, convey to the then duly elected and the constituted Commissioners of said Mahoning County, and to their successors in office forever, a suitable lot of land upon which to erect the public buildings for said county, a copy of which deed is hereto attached marked exhibit "B" and made a part hereof, and in further pursuance of

said enactment of said General Assembly the said citizens of said Canfield on the — day of ———, 1846, executed a bond to said Commissioners of said County of Mahoning with good and sufficient sureties in the penal sum of fifty thousand dollars, conditioned for the payment of said sum of five thousand dollars as stipulated in said eighth section of said act, which bond was then accepted and approved by said Commissioners, but which bond has since been lost or destroyed so that a copy thereof cannot be hereto attached.

6. That in order the more speedily to carry out the object of said act in the erection and construction of said public buildings and to lessen the burdens of taxation thereby, the said citizens of Canfield, many of whom are the plaintiffs herein, with the assent of said Commissioners, proceeded to cause to be erected on said lands so as aforesaid donated to said County, a commodious building designed and suitable for a Court House for said County, and containing therein suitable rooms for the public administration of justice and offices for the various county officers, and at a cost therefor from their own private means of not less than ten thousand dollars and of the value thereof.

7. That on the 28th day of June, A. D. 1848, the said citizens of Canfield, through a committee appointed by them for that purpose, presented said deed for said lot of land and said Court House building thereon to the then County Commissioners of said County for their acceptance in lieu of said payment of said five thousand dollars, as expressed in said eighth section of said act creating said County, which deed for said lot of land and said Court House building thereon, said Commissioners then approved and accepted in lieu of said five thousand dollars and the stipulations of said act, and then took possession thereof, and have ever since held, owned, used and occupied the same for their purposes aforesaid, whereby the real estate of the plaintiffs, as well as the others for whom they sue, became greatly enhanced in value, and their facilities for the transaction of their public business became greatly increased.

8. And the plaintiffs say that they and the other citizens of said Canfield have fully complied with the conditions in said act of February 14th, 1836, required by the citizens and proprietors of said Canfield to be performed; whereby the Seat of Justice for said County of Mahoning, became and forever is permanently located and established at said Canfield.

9. And the plaintiffs further complaining say: That against the remonstrance of a large majority of the citizens of said Canfield and of said

County damaged and inconvenienced thereby, the General Assembly of the State of Ohio on the 9th day of April, A. D. 1874, in form passed the act entitled, "An act to provide for the removal of the Seat of Justice of Mahoning County, Ohio, from the town of Canfield to the city of Youngstown in said County." Whereby it was provided, as therein it fully appears, and shown by a copy thereof hereto attached and marked exhibit "C" and made a part hereof.

10. That at the general election for said County in October, A. D. 1874, in pursuance of said last mentioned act, the adoption and rejection thereof was submitted to the electors of said County, at which election the plaintiffs as well as a large majority of the electors of said Canfield, and also a large majority of the tax paying electors of said County, voted against the adoption of said act, but that a majority of all the electors of said County were reported as having voted for the adoption thereof.

11. That soon after said election the citizens of said Youngstown organized an association for the purpose of, and then commenced the erection and construction of buildings in said city of Youngstown for the transaction of the public business of the County therein, preparatory to the removal of the Seat of Justice from said Canfield to said city of Youngstown; and although they as well as the defendants have had full notice of the premises and of the intention of the plaintiffs to resist the proposed removal by any proper proceeding therefor, and by suit if necessary; yet the said citizens of said Youngstown through said association, are proceeding to erect so called public buildings in said Youngstown, to-wit: A Court House building upon lands not donated by said citizens and which as plaintiffs are informed, and charge the fact to be, are not and cannot be secured to said County; yet the defendants threaten and are taking steps to accept said Court House building whereby to effect the removal of said Seat of Justice and the records and transactions of the public business of the County thereto upon the expenditure of the sum of one hundred thousand dollars upon said buildings, which if carried into effect will cause great and irreparable injury and damage to the plaintiffs, the citizens of Canfield in general, and to the majority of tax paying citizens of said County, in that it would greatly diminish the value of their real estate, injuriously interfere with the transaction of their public business, and greatly inconvenience them in divers other ways in the transaction of their legitimate public business.

12. And the plaintiffs further say that the said citizens of Youngstown city and township, and said association are prosecuting the erection

and completion of said buildings, and will very soon have expended thereon the said sum of one hundred thousand dollars, as by said last Legislative act required. That they have caused to be elected the defendants as Commissioners of said County and other officers of said County, who are in the interests of said citizens of Youngstown confederating and cooperating with them in the unlawful removal of said Seat of Justice; that said defendants, the said Commissioners of said County, threaten to quietly accept said Court House building in Youngstown upon the said expenditure of one hundred thousand dollars thereon, thereby to enable said other county officers in the interest of said Youngstown to stealthily remove the records and transactions of the public business from their respective offices to said building in said city of Youngstown; and said other county officers so as aforesaid in the interest of said citizens of Youngstown, Ohio, threaten that as soon as said building in Youngstown shall be accepted by said defendants, that they will remove the records and transactions of public business of their respective offices to said building in Youngstown in the night season, thereby to gain advantage during the pendency of this or like litigation, to the great and irreparable damage of the plaintiffs, the citizens of Canfield in general, and a majority of the tax paying citizens of said County of Mahoning.

13. And said plaintiffs further say that said act of the General Assembly of the State of Ohio, passed April 9th, 1874, makes no provision to compensate the plaintiffs, or others for the damage sustained by them as aforesaid, by said removal. And it attempts to, and if carried into effect, would, impair and destroy the obligations of the contract entered into between the said citizens of Canfield and said General Assembly, as expressed in said act first recited herein, as shown by exhibit "A," hereunto annexed, and is therefore in violation of the Constitution of the United States and of the Constitution of the State of Ohio, and is therefore void.

14. And the plaintiffs also say that said act of April 9th, 1874, is upon its face in derogation of the Constitution of the State of Ohio, and is therefore unconstitutional and void.

Wherefore the plaintiffs, in consideration of the premises, and being remediless at law, pray the interposition of the chancery powers of the court in their behalf. In this to-wit: That the defendants, the said Board of County Commissioners for the County of Mahoning, be restrained and enjoined from in any manner, whatever, accepting said Court House building, in the city of Youngstown, or any other building

therein, or elsewhere, for and on behalf of said County of Mahoning as and for a public building wherein to transact the public business for said County; and from, in any manner, doing or attempting to do, any act, either directly or indirectly, tending to remove the public records of said County, or the transaction of the public business of said County, usually transacted at Canfield, to the city of Youngstown.

And that upon a final hearing hereof, said Legislative enactment of April 9th, A. D. 1874, whereby the Seat of Justice of said County of Mahoning is sought to be removed to the city of Youngstown, in said County, be declared and decreed to be unconstitutional and void; and that the said Board of County Commissioners in perpetuity be forever enjoined and restrained from, in any manner, whatever, doing any act whereby the present Seat of Justice for said County now located at Canfield, shall in any manner, be impaired or removed under and by virtue of said legislative enactment of April 9th, 1874, and for such other and further relief in the premises as equity and justice shall seem to demand.

By HUTCHINS & TUTTLE,
LUTHER DAY,
RUFUS P. RANNEY,
F. G. SERNIS,
Attorneys for Plaintiffs.

THE STATE OF OHIO, MAHONING COUNTY, SS.

The plaintiffs, Giles Van Hyning, Peter Gee, George F. Lynn, Eben Newton, D. J. Church, J. Truesdale and Warren Hine, being duly sworn according to law, upon oath say, each for himself and not one for the other, that the statements in the foregoing petition are true.

GILES VAN HYNING,
PETER GEE,
GEORGE F. LYNN,
EBEN NEWTON,
D. J. CHURCH,
J. TRUESDALE,
WARREN HINE,

Signed in my presence by the above named affiants, and by them sworn to before me this 19th day of January, A. D. 1876. In witness whereof I hereunto affix my name and official seal.

[SEAL]

F. G. SERVIS,
Notary Public.

EXHIBIT "A."

An Act to Erect the County of Mahoning.

SEC. 1. Be it enacted by the General Assembly of the State of Ohio, That so much of the Counties of Trumbull and Columbiana as come within the following limits or boundaries be, and the same are hereby erected into a separate County, which shall be known by the name of Mahoning, with the County Seat at Canfield, to-wit:

Beginning at the northeast corner of the Township of Coitsville, in the first range of townships in the Western Reserve, thence west along the south lines of the Townships of Hubbard, Liberty, Weathersfield, Lordstown and Newton, in Trumbull County, to the boundary line between Portage and Trumbull; thence south along said boundary line to the southeast corner of Deerfield, in said County of Portage; thence west along the south line of the Township of Deerfield to the boundary line between Stark and Columbiana Counties; thence south along said boundary line to the southeast corner of the Township of Lexington, in said Stark County; thence east along the north lines of the Townships of Knox and Butler, in Columbiana County, to the west line of Perry, in said County; thence north on said west line to the northwest corner of said Township; thence east along the north line to the northeast corner of said Township; thence south along the east line to the north line of the Township of Salem, in said County of Columbiana; thence east along the north line of the Townships of Salem, Fairfield and Unity, in said County, to the boundary line between the State of Ohio and the State of Pennsylvania; thence north along said boundary line to the place of beginning, embracing within the boundaries aforesaid the Townships of Poland, Coitsville, Boardman, Youngstown, Canfield, Austintown, Ellsworth, Jackson, Berlin and Milton, parts of Trumbull County; and Smith, Goshen, Green, Beaver and Springfield, parts of Columbiana County.

SEC. 2. That all suits, whether of a civil or criminal nature, which shall be pending within those parts of the Counties of Trumbull and Columbiana, so to be set off and erected into a new County, previous to the organization of the said County of Mahoning—and all suits pending within the limits of the townships composing said County of Mahoning, mentioned in the first section of this act, shall be prosecuted to final judgment and execution within the Counties of Trumbull and Columbiana respectivelvy in the same manner they would have been if the said County of Mahoning had not been erected.

And the Sheriff, Coroner and Constables, of the said Counties re-

spectively, shall execute all such process as shall be necessary to carry into effect such suits, prosecutions and judgments, and the collectors of taxes for the said Counties respectively shall collect all taxes that shall be levied and unpaid within the parts of the aforesaid Counties, previous to the taking effect of this act.

SEC. 3. That all Justices of the Peace within those parts of the Counties of Trumbull and Columbiana, which by this act are erected into a new County, shall continue to exercise the duties of their offices, until their time of service shall expire, in the same manner as if they had been commissioned for the County of Mahoning.

SEC. 4. That on the first Monday in April next the legal voters residing within the County of Mahoning shall assemble within their respective townships, at the usual place of holding elections, and shall proceed to elect their different county officers, who shall hold their offices until the next annual election, and until their successors are elected ahd qualified.

SEC. 5. That the Court of Common Pleas and Supreme Court of said county shall be holden at some convenient house in the town of Canfield, until suitable County buildings shall be erected.

SEC. 6. That all paupers, idiots and insane persons, belonging to either of said townships included in said County of Mahoning, who are supported at the time of the passage of this act by either of the Counties of Trumbull or Columbiana, shall hereafter be maintained at the proper expense of the townships to which said persons severally belong, until such time as the Commissioners of said county shall establish a Poor House agreeable to the act authorizing the same.

SEC. 7. That said County of Mahoning shall be attached to and form a part of the Third Judicial Circuit of the Court of Common Pleas of this State.

SEC. 8. That before the Seat of Justice shall be considered PERMANENTLY established at Canfield the PROPRIETORS or CITIZENS thereof shall GIVE BOND with good and sufficient security payable to the Commissioners of said County, hereafter to be elected, for the sum of FIVE THOUSAND DOLLARS to be applied in erecting public buildings for said County, and that the citizens of Canfield shall also DONATE A SUITABLE LOT OF GROUND on which to erect public buildings.

SEC. 9. That this act shall take effect from and after the first day of March, one thousand eight hundred and forty-six.

ELIAS F. DRAKE,
Speaker of the House of Representatives.
SEABURY FORD,
Speaker of the Senate.

February 16, 1846.

EXHIBIT "B."

Eben Newton to County of Mahoning.

DEED.

To all people to whom these presents shall come, greeting:

Know ye that we, Eben Newton and Mary S. Newton, wife of said Eben Newton, of Canfield, County of Mahoning, and State of Ohio, for and in consideration of one dollar and that the public buildings for said County of Mahoning shall be erected on the lands hereinafter described and conveyed, do give, grant, bargain, donate and convey to the County Commissioners for said County, in perpetual succession the following lot or parcel of land, situated in Canfield, for said County, for the use of said County for the purpose hereinafter expressed, to-wit: Being part of lot 32, second division of land in said township of Canfield, beginning at the northeast corner of the lot, running south on the line of the public highway 14 rods; thence west 14 rods; thence north 14 rods on a line parallel with the east line; thence running east on the north line of the lot to the place of beginning, subject to a road which we propose to lay out on the north of the above described piece, 59 feet in width and extending the whole length of the north line; the right to do which we do herein and hereby reserve; which conveyance is for the sole and exclusive purpose of erecting public buildings for said County of Mahoning, in fulfillment of the requisitions of the law erecting the County, so far as relates to the donation of a suitable lot of ground on which to erect public buildings: to have and to hold said lot of ground by said Commissioners and their successors in office, for the purposes aforesaid forever, and we said grantors do covenant to and with the said Commissioners and their successors in office, that we will warrant and defend the said premises to them, the said Commissioners and their successors (the said reservation to be excepted) against all lawful claims and demands whatever; and the said Mary S. Newton, wife of the said Eben Newton, for and in consideration of the erecting of said public buildings as aforesaid, doth remise and release to said Commissioners and to their successors for the purposes aforesaid, all my right and title of dower in the lot conveyed as above set forth.

In witness whereof, we set our hands and seals this fifth day of October, A. D. one thousand eight hundred and forty-six.

EBEN NEWTON, [L. S.]
MARY S. NEWTON, [L. S.]

Signed, sealed, acknowledged and delivered in presence of
E. J. ESTEP,
L. C. NEWTON.

THE STATE OF OHIO, Mahoning Co., ss. } Canfield, October A. D. 1846.

Personally came before me, Eben Newton, who signed and sealed the foregoing deed and acknowledged the signing and sealing thereof, to be his act and deed for the purposes therein expressed, and the said Mary S. Newton, wife of the said Eben Newton, being by me examined separate and apart from her said husband, and the contents of said deed being fully made known to her by me, she did declare upon such separate examination that she did voluntarily sign, seal, and acknowledge the same, and that she is still satisfied therewith.

C. R. FOWLER,
Justice of the Peace.

Received May 1, 1846. Recorded May 9, 1845.
SAXTON SYKES, County Recorder.

EXHIBIT "C."

An act "to provide for the removal of the Seat of Justice of Mahoning County from the town of Canfield to the city of Youngstown in said County."

SEC. 1. Be it enacted by the General Assembly of the State of Ohio, that from and after taking effect of this section of this act, as hereafter provided, the Seat of Justice in the County of Mahoning shall be removed from the town of Canfield and shall be fixed until otherwise provided by law, at the city of Youngstown in said County.

SEC. 2. That the foregoing section of this act shall take effect, and be in force when and so soon as the same shall be adopted by a majority of all the electors of said Mahoning County, voting at the next general election aftar the passage thereof, and when suitable buildings shall have been erected as hereinafter provided.

SEC. 3. That the electors of said Mahoning County, at the next general election after the passage of this act, shall endorse or otherwise place on their tickets either the words "for removal" or "against removal," and if a majority of all the electors of said Mahoning County at said election shall vote for removal, the first section of this act shall thereafter be considered and holden to be adopted by such majority; provided that all tickets upon which the words "for removal" shall not be endorsed or otherwise placed, shall be taken and considered as votes, "against removal" as fully as though the words "against removal" were endorsed or otherwise placed thereon.

SEC. 4. That Judges and Clerks of Election in the several townships,

wards and voting precincts, in said County, at the said general election shall cause all votes that may be so given for or against removal to be correctly counted, in doing which all tickets upon which the words "for removal" are not endorsed or otherwise placed, shall be counted as votes "against removal," and shall enter and certify in the respective poll books of said general election the number of votes so counted for as well as against such removal, which poll books shall be returned and opened as required by the act regulating said general election and the opening of the returns thereof; and the officers opening the same, shall at the same time they make, certify and sign the abstracts required by law, also make, certify and sign a separate abstract of all votes so returned for or against removal, showing the number so given in each township and the footings or aggregate number given, in all the townships, which abstract shall be forthwith deposited in the Clerk's office of said County, and be by him forthwith recorded in the journal of the Court of Common Pleas of said County, which record, or a duly certified copy thereof, shall be taken and received as evidence for all purposes as the result of said election.

SEC. 5. That in case a majority of the electors of said County of Mahoning shall vote "for removal," as heretofore provided, the Seat of Justice and County Seat shall be deemed and taken to be removed from Canfield in said County to the city of Youngstown, in said County, and to be located at said city of Youngstown; provided, however, that nothing in the act shall be so construed as to authorize the removal of said Seat of Justice to the city of Youngstown, until the citizens of the city and township of Youngstown shall have donated a lot or lots of land in the city of Youngstown, and of sufficient size and suitably located to accommodate the Court House, Jail, and necessary offices for said County; and shall have erected thereon, or shall have caused to have erected thereon and completed thereon, suitable buildings for Court House, Jail, and all offices and rooms necessary for the transaction of all public business of said County, at a cost for said buildings of not less than one hundred thousand dollars, and to the satisfaction and acceptance of the Commissioners of said County, and all such buildings shall be fully completed within two years from the date of the election at which this act shall be ratified, and said Commissioners shall not, nor shall any other authority of said County levy any tax on the taxable property of said County for said land or buildings, provided that the citizens of Youngstown may, within said two years build said public buildings and tender the same to said County Commissioners.

Sec. 6. It shall be the duty of the Sheriff or Coroner, as the case may be, to cause proclamation to be made to the qualified electors of said County of the time of holding said election, in the same manner as by law he is required to do in other elections, notifying said electors to vote as aforesaid on the question by this act submitted to them.

Sec. 7. The sections of this act subsequent to the first section shall take effect and be in force from and after their passage.

GEORGE L. CONVERSE,
Speaker of the House of Representatives.
ALPHONSO HART,
President of the Senate.

Passed April 9th, 1874.

The hearing of the within application for an injunction is fixed for February 14th, 1876, at the Court House, in Canfield, Mahoning County, Ohio, in open Court, at 11 o'clock A. M. of said day, or as soon thereafter as counsel can be heard and until such hearing and the determination thereof the defendants are hereby enjoined as prayed for in the within petition upon the plaintiffs giving bond in the sum of $500 conditioned according to law, to be approved by the Clerk of said Court, and it is hereby ordered that notice of the hearing of this application shall be given to defendants at least one week before the hearing thereof.

Witness my hand this 25th day of January, 1876.

[SEAL.] PHILO B. CONANT, Judge.

EBEN NEWTON, et als.
vs.
THE BOARD OF COUNTY COMMISSIONERS OF MAHONING COUNTY. } Answer of Defendants.

The said defendants, for their answer to plaintiffs' petition filed herein against them, say:—

That they deny that by said act of the General Assembly of the State of Ohio, passed February 16th, 1846, or by said 8th section of said act the Seat of Justice of said Mahoning County was permanently located or established at said town of Canfield. They deny that said Eben Newton and wife conveyed, by said deed, a copy of which is set out in said exhibit "B," or otherwise, the land or lot therein mentioned and described as is alleged in the petition.

They say that they are not advised as to the facts alleged, concerning

the execution of said bond mentioned in said last named act, and in said petition, and they therefore deny each and every allegation of the petition concerning the same.

They deny that said public buildings at Canfield, were erected as alleged in said petition, by said citizens of Canfield, by or with the assent of said County Commissioners of said Mahoning County then in office; deny the said buildings were erected at a cost of said sum of ten thousand dollars, as alleged or at a cost of five thousand dollars, and deny that the same were of any greater value than said last named sum when completed.

Deny that said buildings were either commodious or suitable for the public administration of justice, or for offices for the various county officers, as is alleged.

They deny that the plaintiffs, or they and other citizens of Canfield, have fully complied with or performed all the conditions in said act of February 16th, 1846, required by them to be performed and complied with; deny that thereby or otherwise the Seat of Justice of said county of Mahoning in anywise became, or forever is, permanently located or established at said town of Canfield.

They deny that against the remonstrance of a majority of the citizens of said Canfield, and of said County of Mahoning, damaged and inconvenienced thereby the General Assembly of the said State of Ohio passed said act of April 9th, 1874, a copy of which is set out in said exhibit "C."

They deny that at said election of October, 1874, a large majority of the taxpaying electors of said County of Mahoning voted against the adoption of said act as alleged.

They deny that these defendants threatened, or ever have threatened, or are taking, or ever have taken, any steps to accept said Court House building, which is now being erected at said city of Youngstown, in said County, either in order to effect the removal of the Seat of Justice or the records of said County, or the transaction of the public business of said County to said Youngstown, upon the expenditure of said sum of one hundred thousand dollars upon said buildings, or for any other object or purpose.

They deny that if said act of April 9th, 1874, shall be enforced or complied with, said public buildings at said Youngstown accepted, and said records and public business be removed from said Canfield to said Youngstown, that the same will cause great and irreparable injury or damage to the plaintiffs, or to them and the citizens of said Canfield in general, or to a majority of the taxpaying citizens of said Connty, in that it will

greatly diminish the value of their real estate, injuriously interfere with the transactions of their public business, or greatly inconvenience them in divers other ways, in the transaction of their legitimate public business, as is alleged, or in any other manner whatever.

They deny that said association of persons in the said city of Youngstown engaged in the erection of said buildings at said city, caused these defendants to be elected as such County Commissioners of said County, and the election of the other officers of said County, as alleged.

They deny that these defendants, or any of them, are in the interest of said citizens of Youngstown to any greater extent than they are and of right ought to be, in the interest of the citizens of said Mahoning County generally, as such County Commissioners. They say that they are not advised as to whether said other County officers of said County are in the interest of said citizens of Youngstown, as alleged, and they deny said allegation.

They deny that these defendants, or either of them, are, or ever have been, confederating or co-operating in any manner whatever, with said citizens of Youngstown, or with any person, or persons, in the unlawful removal of said Seat of Justice, as alleged.

They deny that they or either of them, are threatening or ever have threatened to quietly, or otherwise, accept said Court House building in said Youngstown upon the said expenditure of said one hundred thousand dollars, or of any other sum thereon.

They deny that they are doing, or ever have done, any act to enable said other County officers to stealthily, or otherwise remove the records and transactions of the public business from their respective offices to said building in said city of Youngstown. They have no knowledge or information concerning any threats on the part of said other County officers to remove said records and their said offices, stealthily or otherwise to said building at Youngstown, and they therefore deny the same.

They deny that said plaintiffs, or they and the citizens of Canfield, or any or either of them ever made or entered into, or have or ever had any contract or agreement of any kind whatever, with the said General Assembly of the State of Ohio, or with said State of Ohio expressed by, or contained in, or created by the said act of February 16th, 1846, set out in said exhibit "A" of said petition, or in any other manner concerning said Seat of Justice of said County of Mahoning.

They deny that said act of the General Assembly of the State of Ohio, dated April 9th, 1874, and set out in exhibit "C" of said petition,

attempts to, or if carried into full effect, would impair, or would in any manner destroy, or tend to impair and destroy, any obligation or provision of any contract or agreement entered into between said citizens of Canfield and said General Assembly of Ohio.

They deny that said act is in the respects alleged, or in any respect or provision, whatever, in violation of the Constitution of the United States, or of the Constitution of the State of Ohio, or that the same is in any respect or for any reason void.

They deny that said act of April 9th, 1874, is on its face, or otherwise, in derogation of the Constitution of the State of Ohio, or that the same is unconstitutional or void. And they deny that plaintiffs, or they and those in behalf of whom they sue are entitled to the relief prayed for, or any relief in the premises.

In further answering the defendants specifically admit that after the due passage of said act of April 9th, 1874, and the general election held in October, 1874, for said County, and in pursuance of said act, the question of the adoption or rejection thereof was duly submitted to the electors of said County, and that a majority of all the electors of said County are reported as having voted in favor of the adoption thereof. That in pursuance thereof, the citizens of Youngstown associated to raise said sum of one hundred thousand dollars, in order to erect and complete the said public buildings, and that the same are now in process of construction, and that they will very soon have said sum expended thereon, and said buildings fully completed.

In further answering, defendants aver that said deed from said Eben Newton and wife to the County Commissioners only conveyed the premises therein mentioned, to said Board of County Commissioners, so long as said premises should be used by said county for the public buildings thereof.

They aver that the full legal title in perpetuity of said land upon which said Court House and public buildings are now erected in said city of Youngstown can be secured to defendants for said purpose.

They aver that as such County Commissioners of said County, they have done no act towards the performance of any provisions of said act of April 9th, 1874, nor have they considered what their action shall be thereunder, nor do they intend to take any steps toward the acceptance of said public buildings so being erected at said city of Youngstown, until the provisions and conditions of said act have been fully and faithfully complied with by said citizens of Youngstown; nor to remove or in any

manner aid in removing the records, offices, or transaction of the public business to said buildings until the same shall have been accepted in accordance with the provisions and spirit of said act of 1874; and that when said buildings shall have been completed in accordance with said act, and in pursuance thereof tendered to defendants, they will duly consider concerning their legal duties under the same, and shall take such action in the premises as they shall consider lawful, just and right under the circumstances.

Wherefore, defendants pray that plaintiffs' said petition be dismissed.

THOMAS W. SANDERSON,
A. W. JONES,
H. H. MOSES,
Attorneys for Defendants.

THE STATE OF OHIO, MAHONING COUNTY, SS.

Joseph M. Jackson, Jonathan Schillinger and Sheldon Newton, being duly sworn, on oath, say, that they believe the facts stated in the foregoing answer to be true.

JOSEPH M. JACKSON,
JONATHAN SCHILLINGER,
SHELDON NEWTON,
Board of County Commissioners of Mahoning County, Ohio.

Sworn to and subscribed by said Joseph M. Jackson, Jonathan Schillinger and Sheldon Newton, before me, this 7th day of February, A. D. 1876.

A. W. JONES,
Master Commissioner.

DECREE OE THE COMMON PLEAS.

This cause came on to be heard upon the application of the plaintiffs for the allowance of a temporary injunction; and was heard upon the petition, answer, proofs and exhibits; and was argued by counsel, and submitted to the Hon. Philo B. Conant, Judge holding said Court, who, on consideration overruled said application, and refused to allow said temporary injunction.

And thereupon, the Court, on motion of the plaintiffs, assign this cause for trial this 1st day of March, 1876; and thereupon this cause came on to be heard upon the petition, answer, proofs and exhibits; on consideration whereof, the Court finds the issues joined for the defendant and dismisses said petition.

The plaintiffs give notice of their intention to appeal this case to the District Court; the Court allow said appeal, and fix the bond to perfect said appeal at $500, conditioned according to law, and to the acceptance of the Clerk of this Court. To all of which the defendants except.

RESERVATION AND FINDING OF THE DISTRICT COURT.

At this March term of the District Court, A. D. 1876, this cause came on to be heard upon the petition of plaintiffs', answer of defendants', proofs and exhibits; on consideration whereof, the Court find that soon after the passage of the act of 1846 whereby the County of Mahoning was created as shown by exhibit "A" to plaintiffs' petition attached, the citizens of the town of Canfield, many of whom were owners of real estate therein, viz: Eben Newton, Elisha Whittlesey, John R. Church, Warren Hine, Judson W. Canfield, Pierpont Edwards, Mathias Swank, Darius S. Church, Comfort S. Mygatt, Chauncey R. Fowler, William Wetmore and many others, executed and delivered to the then Commissioners of the County of Mahoning, a good and sufficient bond with sufficient surety securing to be paid to said Commissioners the sum of five thousand dollars as provided in the eighth section of said act of 1846, which bond was accepted by said Commissioners.

The said citizens then also caused to be executed a deed for certain lands by the owners thereof in fee, upon which to erect the public buildings for said County as shown by exhibit "B" attached to said petition.

That afterwards, the said citizens of Canfield caused to be erected upon said lands a Court House commodious and suitable for the transaction of the public business of the County, at a cost of ten thousand dollars, and more of which, among others, the plaintiff, Eben Newton, subscribed and paid about twenty-five hundred dollars; John R. Church, then a resident of and owner of real estate in said Canfield, since deceased, and father of plaintiff, Darius J. Church, one thousand dollars; Elijah Whittlesey, then also a citizen of and owner of real estate in said Canfield, since also deceased, the sum of one thousand dollars; Chauncey R. Fowler, then and now a citizen of and owner of real estate in said Canfield, the sum of one hundred dollars; said Darius J. Church, one of said plaintiffs, being also a citizen of said Canfield, and now by inheritance from said John R. Church, an owner of real estate in said town of Canfield.

That on the 29th day of June, 1848, the citizens of Canfield tendered

said deed and said Court House thereon to the Commissioners of said County in lieu of the payment of said five thousand dollars; and which said Commissioners then on behalf the County accepted in lieu of said bond and in satisfaction of the EIGHTH SECTION of said enactment; that said Commissioners then took possession of the same; caused said deed to be recorded; and said Court House to be furnished; and the same has ever since been used as the Court House for said County.

That at the time of the passage of said act, and ever since the following named plaintiffs owned real estate in said Canfield: Eben Newton, Warren Hine, Judson W. Canfield, Pierpont Edwards, Mathias Swank, Darius J. Church, Comfort S. Mygatt, Chauncey R. Fowler and William Wetmore.

And the Court further finds, that a year before the passage of the act of April 9th, 1874, entitled "An Act to provide for the removal of the Seat of Justice for Mahoning County from the town of Canfield to the city of Youngstown in said County," the citizens of said County formed a political party called the Removal Party, for the purpose of forwarding the removal of said County Seat, and by which the defendants were nominated and elected as such Commissioners.

And the Court further finds, that shortly after the adoption of said act of the General Assembly of April 9th, 1874, which was adopted in the mode and manner provided in said act, and by a majority of nineteen hundred and seventeen votes, in an aggregate vote of 6,035. That then divers of the citizens of Youngstown associated themselves together for the purpose of procuring the necessary funds and erecting the public buildings as provided in the fifth section of said act, and for that purpose appointed a building committee, consisting of Chauncey H. Andrews, Hugh B. Wick, Henry Tod, Joseph Brown and Matthew Logan.

That before the 10th day of March, 1875, the said city of Youngstown had acquired the title in fee simple of two lots of land in said city, being the same in the deed hereinafter set forth.

On the 16th day of March, 1875, there being no Board of Improvements in said city, the City Council of said city of Youngstown, in due form of law, passed and duly published an ordinance, of which a copy is contained in the deed aforesaid, hereinafter set forth. And thereupon the Mayor of said city, in due form of law, executed a deed for said lots to said building committee above named, which deed is in the words and figures, following, to-wit:

The City of Youngstown to C. H. Andrews, et al.

DEED.

Know all men by these presents: Whereas, on the 16th day of March, A, D. 1875, the City Council of the City of Youngstown, County of Mahoning, and State of Ohio, duly and legally passed an ordinance, of which the following is a true and correct copy, to-wit:

An ordinance to provide for the sale and conveyance of two certain lots of land therein described. Whereas, on the 9th day of April, A. D. 1874, the General Assembly of the State of Ohio authorizing and providing for the removal of the Seat of Justice in the County of Mahoning and State of Ohio, from the town of Canfield to the city of Youngstown in said County, upon certain specified conditions, one of which is that the citizens of the city and township of Youngstown in said county, shall donate a lot or lots in said city of sufficient size and suitably located to accommodate the Court House, Jail, and necessary for offices for said county; and, whereas, Chauncey H. Andrews, Hugh B. Wick, Joseph H. Brown, Henry Tod and Matthew Logan, have been by said citizens duly and legally appointed a Building Committee, with full power and authority to purchase such lot or lots, and build and construct thereon such Court House, Jail, and necessary offices, and said committee being of opinion that the following described lots, to-wit: Lot number three hundred and thirty-five, according to the latest numbering of city lots in said city, located on the southwest corner of Wood and Market streets, and being a frontage on said Wood street of 164 feet, and extending back at right angles therewith a distance of 150 feet; and lot number four hundred and seventeen, according to the latest numbering of city lots in said city, located on the southeast corner of Wood and Market streets, and having a frontage on Wood street of 150 feet, and extending back at right angles therewith a distance of 150 feet, are in size sufficient and in location for said donation, and have therefore purchased the same from said city. Therefore—

SEC. 1. Be it ordained by the City Council of the City of Youngstown, that the Mayor of said city shall be, and he is hereby authorized and required, upon payment to him for said city of ten dollars, to properly execute and deliver to said Chauncey H. Andrews, Hugh B. Wick, Joseph H. Brown, Henry Tod and Matthew Logan, a deed conveying said lots herein above described, to them, their successors and assigns, forever, in trust in fee upon the trust hereinafter specified,

SEC. 2. That in said deed said grantees shall be authorized and re-

quired to build and construct upon one or both of said lots, such Court House, Jail, and necessary offices for said County, which shall in all repects comply with the provisions of said act of said General Assembly, and if in the opinion and judgment of said grantees in trust one of said lots shall be sufficient in size to build and construct thereon such Court House, Jail, and necessary offices, then and in that event, said grantees in trust shall be authorized and required to sell the other for such sum as it may be worth, and convey the same in fee simple to the purchaser thereof, and to expend such sum as may be received by them therefor, in building and constructing such Court House, Jail and necessary offices; and that, if in the opinion and judgment of grantees in trust, a lot or lots of land more conveniently and suitably located can be procured in said city, either by purchase or exchange, whereon said Court House, Jail and necessary offices could be built and constructed at less expense than upon either one or both of said lots; then and in that event, said grantees in trust shall in said deed be authorized and required to sell said lots for such sum as they may be worth, and convey the same in fee simple to the purchaser thereof, and to expend such sum as may be received by them therefor, in procuring such more convenient and suitable lot or lots, and in building and constructing thereon when procured, such Court House, Jail, and necessary offices, or to exchange said lots for such more convenient and suitable lot or lots, and to expend the difference in value, if any received by them, in constructing such Court House, Jail, and necessary offices upon the lot or lots exchanged for, and that said grantees in trust shall be authorized and required in said deed to convey in accordance with the provisions of said act of the General Assembly, such Court House, Jail, and necessary offices with the lots whereon the same may be located, to the Commissioners of said County of Mahoning, whenever such Court House, Jail, and necessary offices shall be completed and accepted by said Commissioners.

SEC. 3. That this ordinance shall take effect from and after its publication according to law. Passed in Council March 6th, 1875.

D. V. TILDEN, President of Council.

GEORGE J. WILLIAMS, Clerk.

And whereas, said ordinance has been duly and legally published the length of time required by law, and is now in full force and effect in law.

Now, therefore, in consideration of ten dollars paid to its use by said grantees herein, the said City of Youngstown and the said City Council, acting by and through William M. Osborn, Mayor of said city, who

hereby acknowledges the receipt of said consideration, do hereby grant, bargain, sell and convey unto said Chauncey H. Andrews, Hugh B. Wick, Joseph H. Brown, Henry Tod and Matthew Logan, and unto their successors and assigns forever, said lots of land herein above, and in said ordinance mentioned and described,

To have and hold the same together, with the appurtenances and every part thereof, unto said grantees, their successors and assigns forever, in fee upon the trusts nevertheless, and to and for the uses and purposes in said ordinance limited, described and declared.

In witness whereof, the said City of Youngstown and the said Council have caused said Wm. Osborn, Mayor as aforesaid, to subscribe his name and have caused the corporation seal of said city to be affixed to these presents, this 30th day of March, A. D. 1875.

WM. OSBORN, Mayor, [L. S.]

Signed, sealed and acknowledged, in the presence of
JOHN M. EDWARDS,
JOHN A. LADD.

The State of Ohio, }
Mahoning County. } Personally appeared before me, a Notary Public, in and for said County, William M. Osborn, Mayor as aforesaid, who acknowledged the signing and sealing of the above deed to be his free and voluntary act and deed and to be the free and voluntary act and deed of said city and council.

[SEAL.] JOHN M. EDWARDS, Notary Public.

Received for Record June 2d, 1875. Recorded June 9th, 1875.

S. B. REIGER, Recorder.

That said building committee therefore proceeded to construct and are causing to be constructed upon one of said lots at a cost of one hundred thousand dollars and upwards the public buildings as provided for in said act, and upon the completion of the same design, to convey the same to the Commissioners of said County as and for a performance of the conditions provided in the fifth section of said act of April 9th, 1874.

And the Court further find that the aforesaid title to said lots and buildings is the only title which said building committee and said citizens of Youngstown, and said city of Youngstown now have to the same.

And the Court further find that said lots now and at the time of executing said deed, are and were, each of the value of ten thousand dollars.

And the Court further find, that there is good reason to believe that

upon the completion of said buildings upon said lot in said city of Youngstown, as provided in said act; and upon the execution and tender by said building committee to said Commissioners of a deed thereof, the said Commissioners will accept the same and proceed to do any acts pertinent to their office as such Commissioners which may be necessary for and pertinent to the removal of said County Seat to the city of Youngstown.

And the Court find as matter of law, that if upon the facts aforesaid under the pleadings in the case, the plaintiffs ought to have any relief, then relief ought so be granted to them; herein, and otherwise, that the petition ought to be dismissed.

And because, in the opinion of the Court, difficult and important questions arise in the determination of said matters, the Court do, upon motion of both parties, order that the same be reserved for decision in the Supreme Court, and final judgment.

EBEN NEWTON, et als.
vs.
THE BOARD OF COUNTY COMMISSIONERS OF MAHONING COUNTY. } IN SUPREME COURT OF OHIO.

This cause was brought into this Court by the order of reservation of the District Court of Mahoning County, and came on for trial and hearing upon the plaintiffs petition with the exhibits A, B and C therein referred to and set forth, which exhibits are hereby declared to be a part of the record herein, and upon the defendants answer and the record of the order of reservation, and of the findings of the District Court aforesaid. And it was upon said trial and hearing insisted on the part of said plaintiffs, that a contract of binding obligations with said proprietors and citizens of said Canfield, mentioned in the said act entitled, "An Act to erect the County of Mahoning" passed by the General Assembly of the State of Ohio on the 16th day of February, A. D. 1846, set forth in said Exhibit "A" was established, made and shown by virtue of the provisions of said act, and the facts shown by the record herein, namely, a contract to the effect, that said county seat should never be removed from Canfield without the consent of said proprietors and citizens of Canfield and without compensation to them, and that the provisions of said act of the General Assembly of the State of Ohio set forth in said Exhibit "C" entitled "An Act to provide for the removal of the seat of justice of Mahoning County, Ohio, from the town of Canfield to the City of Youngstown in said County" passed on the 9th day of April A. D. 1874, (71 Ohio Laws page 180) were in contraven-

tion of said obligations of said contract so insisted upon and claimed, and that said provisions of said last mentioned act would, if of force, impair said obligations and that said provisions were therefore opposed to the Constitution of the United States and in particular to so much of article one (1) section ten (10) thereof as provides that no State shall pass any law impairing the obligations of contracts, and were in so far void; but the court upon trial and after consideration was of the opinion that no contract with said proprietors or citizens of binding obligation was made, shown or established by said act, entitled "An Act to erect the County of Mahoning" and the other facts appearing upon said record, and that the provisions of said above mentioned act, passed on the 9th day of April, 1874, as aforesaid were not opposed to said provisions of said article one, section ten, of the Constitution of the United States, nor to any other provisions of said Constitution, nor to any provision of the Constitution of the State of Ohio, and were valid and binding, aud that the plaintiffs by virtue of none of the other matters appearing upon said record were entitled to relief in this action; and upon the holding aforesaid and in consideration thereof the court do hereby order, adjudge and decree that the plaintiffs petition should be, and the same is hereby dismissed and that the defendants recover of the plaintiffs their costs herein taxed at $190.35. And it is further ordered that a special Mandate be sent to the Court of Common Pleas of Mahoning County to carry this judgement into execution. And thereupon on motion of the plaintiffs; it is ordered to be certified and made a part of the record and entry herein, that on the trial and hearing of this case it became and was material to determine whether by virtue of the said provisions of the said act entitled "An Act to erect the County of Mahoning" and of the other facts shown in the said record a contract of binding force and obligation was created as claimed by the plaintiff as aforesaid, and whether the said provisions of said act of the General Assembly of the State of Ohio, entitled "An Act to provide for the removal of the Seat of Justice of Mahoning County, from the town of Canfield, to the City of Youngstown, in said County," were opposed to, or in conflict with said provisions of the Constitution of the United States, and that upon said questions this Court determined and held as already stated herein, and in favor of the validity of said last named act.

And this Court order it to be further certified that this Court is the highest Court of law and equity in the State of Ohio in which a decision of this case can be had.

ARGUMENT.

ARGUMENT.

EBEN NEWTON, et als.
vs.
THE BOARD OF COUNTY COMMISSIONERS OF MAHONING COUNTY, OHIO. } ARGUMENT FOR DEFENDANT.

The history, nature of, and facts in this case, are fully disclosed by the preceding record, which, for convenience of reference, is printed herewith. The case may be briefly stated as follows:—On the 16th day of February, 1846, the Legislature of the State of Ohio enacted a law to erect the county of Mahoning in said state, out of parts of the counties of Trumbull and Columbiana. Said act is given in full in the record, as exhibit A attached to the petition, page 7. By the first section of the act the county seat of such new county was established at the town of Canfield. The eighth section of the act however, provides: "That before the seat of justice shall be considered permanently established at Canfield, the proprietors or citizens thereof shall give bond, with good and sufficient security, payable to the commissioners of said county, hereafter to be elected, for the sum of five thousand dollars, to be applied in erecting public buildings for said county, and that the citizens of Canfield shall also donate a suitable lot of ground on which to erect public buildings." After the passage of said law, and in order to comply therewith, Eben Newton and his wife, (citizens of said town of Canfield,) conveyed to the county commissioners of such new county, an acre of land, located in the town of Canfield, on which to erect the public buildings. The conveyance of Eben Newton and wife to the commissioners is shown by exhibit B, of the original petition, set out in the record at page 9. The bond provided for by the eighth section of the act was also given by certain citizens of Canfield to the commissioners, and accepted by the latter, but no payment of the same or any part thereof was ever made in money, but in lieu of the money payment the citizens of Can-

field erected a court house, at a cost of about ten thousand dollars, as claimed, which the commissioners accepted in discharge of the bond. A jail and other necessary buildings were subsequently erected by the commissioners at the expense of the county, and the transaction of the public business of said county was begun by means of such court house and buildings early in the year 1847, at the town of Canfield, and continued until the removal of the county seat in 1876, a period of about thirty years.

On the 9th day of April, 1874, the Legislature of Ohio passed an act, entitled "An act to provide for the removal of the seat of justice of Mahoning county from the town of Canfield to the city of Youngstown in said county." This act is fully set out as exhibit C, attached to the original petition in the record at page 10. It provided among other things for the submission of the question of removal to the electors of said county, in accordance with the requirements of section thirtieth of article second, of the Constitution of the State of Ohio, of 1851, which is as follows:

"No new county shall contain less than four hundred square miles of territory, nor shall any county be reduced below that amount; and all laws creating new counties, changing county lines or *removing county seats* shall, before taking effect, be submitted to the electors of the several counties to be effected thereby, at the next general election after the passage thereof, and be adopted by a majority of all the electors voting at such election in each of the said counties; but any county now or hereafter containing one hundred thousand inhabitants, may be divided whenever a majority of the voters residing in each of the proposed divisions shall approve of the law passed for that purpose; but no town or city within the same shall be divided, nor shall either of the divisions contain less than twenty thousand inhabitants." At the succeeding general election held on the 13th day of October, 1874, the act of April 9th, 1874, was duly submitted to the electors of Mahoning county, and was by a large majority of such electors duly approved; and thereafter such proceedings and measures were taken in pursuance of said act, in the erection of public buildings at the city of Youngstown, and otherwise, as resulted in the removal of the county seat *de facto*, on the 12th day of August, 1876.

On the 29th day of January, 1876, however, the plaintiffs (who it is conceded were citizens of said town of Canfield) filed their petition in the Court of Common Pleas of Mahoning county, Ohio, against the Board of County Commissioners of said county, stating substantially the

foregoing facts, and praying as follows, to-wit: "Wherefore the plaintiffs, in consideration of the premises, and being remediless at law, pray the interposition of the chancery powers of the Court in their behalf, in this, to-wit: That the defendant, the said Board of County Commissioners, for the county of Mahoning, be restrained and enjoined from in any manner whatever accepting said court house building in the city of Youngstown, or any other building therein, or elsewhere, for, or on behalf of said county of Mahoning, as, and for a public building wherein to transact the public business for said county; and from in any manner doing, or attempting to do any act, either directly or indirectly tending to remove the public records of said county, or the transaction of the public business of said county, usually transacted at Canfield, to the city of Youngstown,

And, that upon a final hearing hereof, said legislative enactment of April 9th, A. D. 1874, whereby the seat of justice for said county of Mahoning is sought to be removed to the city of Youngstown, in said county, be declared and decreed to be unconstitutional and void; and that the said Board of County Commissioners in perpetuity, be forever enjoined and restrained from in any manner whatever doing any act whereby the present seat of justice for said county, now located at Canfield, shall in any manner be impaired, or removed under, and by virtue of said legislative enactment, of April 9th, 1874,

And for such other and further relief in the premises as equity and justice shall seem to demand.

The defendant answered the petition, and the answer is fully set out in the record, page 12. Upon the trial of the case in the Court of Common Pleas, the injunction prayed was refused, and the plaintiffs appealed to the District Court, which at its April term, 1876, reserved the case to the Supreme Court of Ohio, after making the findings set out in record, page 17. The District Court at its December term, 1875, dismissed the plaintiffs petition; and the case, or rather that portion of it, of which this Court has jurisdiction, was then brought here. The only question arising in the case, of which this Court will take jurisdiction, is that made as to whether the said act of the Legislature of the State of Ohio, of April 9th, 1874, is in violation of section ten, of article first, of the Constitution of the United States, as impairing the obligation of what is claimed by plaintiffs to be a *contract* created by, or arising out of the enactment of the Legislature of Ohio, of February 16th, 1846, erecting the county of Mahoning, and locating its county seat at Canfield, and the

subsequent performance on the party of the citizens and proprietors of Canfield of the requirements of the eighth section of that act, as shown by the record. The exact question presented to this Court, arises upon the following certificate of the Supreme Court of Ohio, viz. "And thereupon, on motion of the plaintiffs, it is ordered to be certified, and made a part of the record and entry herein, that on the trial and hearing of this case it became, and was material to determine whether, by virtue of the said provisions of the said act entitled "An act to erect the county of Mahoning," and of the other facts shown in the said record, a contract of binding force and obligation was created as claimed by the plaintiffs as aforesaid, and whether the said provisions of said act of the General Assembly of the State of Ohio, entitled "An act to provide for the removal of the seat of justice of Mahoning county from the town of Canfield to the city of Youngstown in said county," were opposed to, or in conflict with said provisions of the Constitution of the United States; and that upon said questions this Court determined and held as already stated herein, and in favor of the validity of said last named act." Record, page 22.

FIRST.

The first question for the Court to determine is, whether a *contract* exists as claimed; and whether the enactment of the Legislature of the State of Ohio of February 16th, 1846, entitled "An act to erect the county of Mahoning," together with the subsequent acts of the plaintiffs, and those under whom they claim, under, and in pursuance of said act amount to a contract, with the State of Ohio, as one party, and the plaintiffs as the other party, by virtue of which the latter have become in some manner *owners* of the *county seat* of Mahoning county, or of its *location* in the county, or of a *franchise* of some kind in it, or in its location, not shared in by any of the other citizens of the county or state; and which right or franchise cannot be legally taken from them by the state acting by any subsequent Legislature.

The simple statement of the claim, I am aware, would seem to be sufficient to justify any legal mind in withholding assent to it; but at the same time I am not unmindful that from the commencement of the litigation growing out of the proposed removal of the county seat in question, the claim above stated has been earnestly (and with apparent candor) pressed upon the attention of all the courts that have heretofore had the case before them; and I am bound to assume the continued good faith of the claim, and treat it accordingly.

It may be assumed that the Legislature of the State of Ohio had the *power* and authority possessed by any State Legislature to enter into, and make a contract which would be binding upon, and enforceable against the state, in and about a proper *subject matter*. It may also be assumed that "*the proprietors and citizens of Canfield*," were competent either to receive and hold a *legislative grant*, or to contract with the Legislature concerning such proper subject matter. These assumptions, however, are scarcely a step toward a solution of the matter, and by no means dispose of the question.

There is no good reason apparent for any departure from the well recognized rules and principles of construction to be applied to that which is presented in this case as a *grant* or *contract;* the importance and nature of the case rather demamd a rigid application of them. One of the rules which would seem to be pertinent, and which has been approved, and applied by very high authority is as follows:—"It is a well settled principle, that as against the Government nothing is a *grant*, unless it is evidenced by clear and explicit terms; and that no grant can be raised by inference or presumption; and the right granted must be clearly defined." *Charles River Bridge v. Warren Bridge*, 11 Peters 420. *Jefferson Branch Bank v. Skelly*, 1. Black, 446. *Ohio Life Ins. & Trust Co. v. Debolt* 16, Howard 416. *The Binghamton Bridge* 3 Wallace 75.

In the last named case the Court says: "The principle is this; that all rights which are asserted against the state must be clearly defined and not raised by inference or presumption; and if the charter is silent about a power, it does not exist. If on a fair reading of the instrument, reasonable doubts arise as to the proper interpretation to be given to it, those doubts are to be solved in favor of the State." In the case of *Ohio Life Insurance & Trust Co. v. Debolt*, above cited, Chief Justice Taney says:—"The rule of construction in cases of this kind, has been well settled by the court. The grant of privileges and exemptions to a corporation are strictly construed against the corporation, and in favor of the public. Nothing passes but what is granted in clear and explicit terms, and neither the right of taxation nor any other power of sovereignty which the community have an interest in preserving undiminished, will be held by the court to be surrendered, unless the intention to surrender is manifested by words too plain to be mistaken. This is the rule laid down in the case of *Billings v. The Providence Bank*, and reaffirmed in the case of *The Charles River Bridge Company*."

One of the important objects being to arrive at the intention of the Legislature of Ohio, which enacted the law of February 16th, 1846, by

means of the foregoing principles of construction, as well as by any other legitimate means, it will also be pertinent to examine somewhat the manner and means by which county seats had previous to 1846 been established in Ohio, and the law in force at the date of the act in question, which will in my judgment fully develop the intention of the Legislature, and the objects intended to be accomplished. The earliest enactment in Ohio, concerning the establishment of county seats, was one passed March 28th, 1803. (I. Chase Stat. 353,) entitled "An act establishing seats of justice." I transcribe the necessary parts of it.

"Sec. 1. *Be it enacted, &c.* That for each new county established during the present or any future session of the legislature, three commissioners shall be appointed by a resolution of both branches of the legislature, whose duty it shall be to examine and determine what part of said county so established, is the most eligible for holding the several courts within said county; and it shall be the duty of the Secretary of State, immediately to notify the persons of their several appointments.

Sec. 3. That the commissioners, or any two of them, within sixty days after the notification of their appointment, shall assemble at some convenient place in that county where the seat of justice is to be established, giving twenty days' notice, posted up in three of the most public places in said county, notifying the inhabitants thereof, of the time, place and purport of their meeting; and the said commissioners when assembled, and having taken an oath or affirmation before a magistrate to faithfully discharge the duties assigned them by this act, shall proceed to examine and select the most proper place as the seat of justice, as near the centre of the county as possible, paying regard to the situation, extent of population and quality of the land, together with the general convenience and interest of the inhabitants.

Sec. 4. That the commissioners, after having agreed upon the place for the seat of justice, shall make report thereof to the next court of common pleas to be held in said county, and if it appears that no town has been previously laid off at the place agreed on by the commissioners, the court shall appoint a director, who, after giving sufficient surety for his faithful performance, shall be fully authorized to purchase the land of the proprietor or proprietors, for the use and behoof of the county, and proceed to lay off said land into lots, streets and alleys, under such regulations as the court may prescribe; and the said director is hereby further authorized to dispose of the said lots, either at public or private sale, as the court may think proper, and to make a legal conveyance of the same

in fee-simple to the purchaser. *Provided always*, that the lands thus purchased and laid off into lots, shall not exceed seven hundred acres.

Sec. 5. That the first proceeds of the sale of lots shall be applied to the payment of the land and defraying the necessary expenses of laying off the lots; the residue of the money shall be paid into the county treasury.

Sec. 6. That if the land agreed upon by the commissioners cannot be purchased at a reasonable price, or a good and legal title in fee-simple be obtained, the commissioners shall forthwith select the next most eligible place for the seat of justice."

The foregoing act remained in force until the 11th day of January, 1820, when a new act was passed entitled "An act establishing seats of justice." (11 Chase, Stat. 1080.) The important provisions of which were as follows:

"Sec. 1. That for each new county established during the present, or any future session of the legislature, three commissioners shall be appointed by a resolution of both branches of the legislature, whose duty it shall be to examine and determine what part of said county, so established, is the most eligible for holding the several courts within said county; and it shall be the duty of the Secretary of State, immediately to notify the persons of their several appointments.

Sec. 3. That the commissioners or any two of them, within sixty days after the notification of their appointment, shall assemble at some convenient place in that county, where the seat of justice is to be established, giving twenty days notice, published in some newspaper printed or circulated in said county, or by having the same posted up in three of the most public places therein, notifying the inhabitants thereof, of the time, place and purport of their meeting: and the said commissioners, when assembled, after having taken an oath or affirmation, before a magistrate, to faithfully discharge the duties assigned them by this act, shall proceed to examine and select the most proper place as a seat of justice, as near the center of the county as possible, paying regard to the situation, extent of population, and quality of land, together with the general convenience and interest of the inhabitants.

Sec. 4. That the commissioners after having agreed upon the place for the seat of justice, shall make report thereof to the next court of common pleas, to be held in said county, and if no town has been previously laid off, at the place agreed on by the commissioners, the court shall appoint a director, who, after giving sufficient security for his faithful

performance, shall be fully authorized to purchase the land of the propietor or proprietors, for the use and behoof of the county, but in no case shall he be authorized to give a greater sum per acre than the price stipulated by the commissioners who selected the site, and proceed to lay off said land into lots, streets and alleys, under such regulations as the court may prescribe; and the said director is hereby further authorized to dispose of the said lots, either at public or private sale, as the court may direct, and to make a legal conveyance of the same, in fee-simple to the purchaser: *provided always*, that the lands thus purchased and laid off into lots, shall not exceed seven hundred acres.

Sec. 5. That the first proceeds of the sale of said lots shall be applied to the payment of the land, and defraying the necessary expenses of laying off the lots; and the residue of the money shall be paid into the county treasury.

Sec. 6. That if the land agreed on by the commissioners, cannot be purchased at the price limited, or if a good and legal title in fee-simple cannot be obtained, the commissioners shall fortwith select the next most eligible place for the seat of justice."

The foregoing act remained in force until the third day of February, 1824, when it was repealed by an act of that date entitled, "An act establishing seats of justice." (Swan & Critchfield's Stats. 1386,) the important parts of which are as follows:

Sec. 1. That for each new county heretofore established, or which may be established during the present, or any future session of the legislature, three commissioners shall be appointed, by a resolution of both branches of the legislature, whose duty it shall be to examine and determine what part of said county so established, is the most eligible for the establishment of a seat of justice within the said county; and it shall be the duty of the Secretary of State immediately to notify the persons of their several appointments.

Sec. 3. That the commissioners or any two of them, within sixty days after the notification of their appointment, shall assemble at some convenient place in that county, where the seat of justice is to be established, giving twenty days notice, published in some newspaper printed or circulated in said county, or by having the same posted up in three of the most public places therein, notifying the inhabitants thereof, of the time, place and purport of their meeting: and the said commissioners, when assembled, after having taken an oath or affirmation, before a mag-

istrate, or some other person legally authorized to administer oaths, to faithfully discharge the duties assigned them by this act, shall proceed to examine and select the most proper place as a seat of justice, as near the center of the county as possible, paying regard to the situation, extent of population, and quality of land, together with the convenience and interest of the inhabitants.

Sec. 4. That the commissioners after having agreed upon the place for the seat of justice, shall make report thereof to the next court of common pleas, to be held in said county, if the same shall have been organized; but if the county shall not have been organized, then to the court of common pleas of any county to which such new county, or any part thereof may be attached for judicial purposes. And if no town has been previously laid off, at the place agreed on by the commissioners, the court shall appoint a director, who, after giving sufficient security for his faithful performance, shall be fully authorized to purchase the land of the proprietor or proprietors for the use of the county, (but in no case shall he be authorized to give a greater sum per acre than the price stipulated by the commissioners who selected the site), and proceed to lay off said land into lots, streets and alleys, under such regulations as the court may prescribe; and the said director is hereby further authorized to dispose of the said lots, either at public or private sale, as the court may direct, and to make a legal conveyance of the same, in fee-simple to the purchaser:—Provided, always, that the lands thus purchased and laid off into lots, shall not exceed seven hundred acres.

Sec. 5. That the first proceeds of the sale of said lots, shall be applied to the payment of the land, and defraying the necessary expenses of laying off the lots; and the residue of the money shall be paid into the county treasury.

This last named act is still in force, and was in force at the date of the passage of the act of February, 1846, in question. I have transcribed all the important provisions of all the enactments of the state concerning the establishment of county seats, in order to show the *settled policy* of the state upon that subject. It is apparent by an examination of them, that the designs of the legislatures were to accomplish two objects; first to obtain land sufficient, and properly located upon which to erect the public buildings of the county, and second, to create a fund with which to erect such public buildings, without the imposition of any tax for such purposes, upon the inhabitants of such new counties. To that end all the acts provide, that the commissioners to be appointed by joint resolution of

the legislature shall select the site, and agree with the owner or owners of the land sought to be used, on a price to be paid for it, the quantity of land not to exceed seven hundred acres; and then, if the land had not previously been laid off into lots, streets and alleys, the court of common pleas was to appoint a director to do that, and also purchase the land, sell and convey all not required for the public buildings, receive the purchase money, *first pay for the land, and the expenses concerning it, and then pay the residue into the county treasury.* Of course, if such *residue* thus paid into the county treasury was sufficient to pay for the construction of the county buildings, no taxation of the inhabitants of the counties would be necessary for that purpose. It will be further observed, that the *location* of the seat of justice in accordance with these enactments, would necessarily tend to greatly enhance the value of the lands purchased under them, as well as all the adjoining and contiguous lands, whether already located in a village or not; and that it was reasonably to be expected that a larger price could be obtained for the land so purchased under the acts than was paid for it, especially after the division into lots, streets and alleys; *and that such enhanced price would be paid by purchasers because of such location of the seats of justice,* with reference *to such lands.* It would seem, that if a *contract* could in any case be claimed with reference to the location of a seat of justice, which could ever operate to prevent its subsequent removal by the legislature of the state, upon the ground of the unconstitutional impairment of the obligation of such contract, such claim might well be urged in all cases of the establishment of seats of justice under the enactments mentioned; for in each case it would be a matter of apparent presumption, that those who purchased land from the director appointed under the statutes, did so because of the location of the seat of justice, as above stated, *permanently,* with reference to the land so purchased. Such purchaser could urge the consideration that he bought and paid for the land because the seat of justice was permanently located near his purchase, which caused him to pay much more than such land purchased by him was otherwise worth; that to remove such seat of justice thereafter, would be to deprive him of the benefit of his contract of purchase with the director, who acted as the agent of the state: hence the state may not, by any subsequent removal, deprive him of his consideration, or *franchise* in such location of such seat of justice; at all events, without *compensation.* While it may amount to but little as argument to say that the history of the litigation of the state furnishes no instance of any such claim ever having been made by any of the many purchasers of lots or lands under such circumstances, after removal of seats of justice

thus established and located, still the fact is somewhat significant, as bearing upon the question of the general understanding of the *intent* of the Legislatures, in such establishment and location, not to create a *grant* or *contract*, that could prevent any subsequent Legislature from removing such seat of justice, without *appropriation* or *compensation;* and I assume that if the Legislature did not *intend* to make a *grant*, or enter into a *contract*, in such cases, and that such was the understanding also of those who purchased under the circumstances mentioned, neither a grant or contract could exist, in direct opposition to the intention of all parties, at the time of the transaction.

Now, I claim that the Legislature of 1846, which enacted the special act, in question, for the erection of the county of Mahoning, simply *intended* and undertook to establish the seat of justice of such new county in exact accordance with the *settled policy* of the state, as before shown, and in accordance with the *general statutes* then in force, upon the subject, being the above mentioned act of February 3, 1824.

It will not be claimed that the Legislature of 1846 had not the power, under the Constitution of the State of 1802, then in force, to make the *special* enactment, in question, applicable alone to Mahoning county, and to do all things itself, concerning the establishment and location of the seat of justice for said county, by means of direct provisions in the enactment for that purpose, that it might have done through the intervention and agency of the commissioners and directors provided for by the general statute in force. In determining then, that the seat of justice for the new county of Mahoning just created, should be located at Canfield, it did no more than such commissioners created by the Legislature, could do. In accepting land for public buildings of the county, it did no more than might have been done by such commissioners; and in providing a fund to construct such buildings it did just the same thing that was done under the general statute, but without its machinery, to accomplish the same purpose. In both cases, taxation of the inhabitants, to procure land, and to construct buildings was obviated. In the case under the general statute, the lands near to the location of the seat of justice to be purchased from the state by the individual would be greatly benefitted; in the case under the special statute, where no land was purchased by the State through its director, or otherwise, nor sold to individuals, the lands *already owned* by the latter, by reason of the location of the seat of justice near them, would be enhanced in value, and therefore the same benefits would accrue in the one case as in the other. It is very difficult to perceive how a case of legal obligation could arise in the

one case, that would not in the other. If an individual owning the land which is desired for the location of the seat of justice was willing, on account of the benefits to be derived to himself, or the inhabitants generally, to donate the necessary quantity of land and save the state from the necessity of going into the market and buying and selling for the purpose, can it legitimately be affirmed that such change of method of procedure amounts to a *contract* or *grant*, when by it, neither the Legislature nor those affected by what it did, had any intention at the time to do more than establish and locate the county seat in the ordinary manner, and prevent the necessity of taxation, by means of donations, instead of purchase and sales? It would be difficult to give assent to the claim if made, that it was the design of all the general enactments above mentioned, to establish and locate seats of justice under them in Ohio so that subsequent legislation would be ineffectual to remove them, when the will, or convenience of the people interested in them might demand such removal, and I must say, that if all seats of justice established in Ohio, since 1803, (which will embrace nearly all in the state) were so established as to prevent removal of them, when the circumstances above mentioned might exist, the state of Ohio presents an anomalous state of *permanency* in that regard. Or, if assent can be given to the modified form of the claim in this case, that removal might be made, by first compensating those who have been fortunate enough to acquire some species of indefinable property, or *franchise* in seats of justice, then the conclusion is apparent, that the state of Ohio, in the absence of any necessity, by means of its careless legislation, or otherwise, has placed itself under legal obligations to a portion of its citizens, by the grant of special privileges, in violation of its Constitution, to get rid of which, it must, if the necessity arises, pay large sums of the money of the tax payers of the state. It seems impossible that assent should be given to either of the claims; and if not, and it follows, that the converse of the claim is true, and that all seats of justice in Ohio, are established and located under the general statutes mentioned, without any design to create or confer any special privilege or property in connection with them, or, in any manner arising out of such establishment or location, and when in fact none did so arise, it would be reasonable to express surprise, that notwithstanding, in one special instance, in establishing and locating the county seat of Mahoning county, the Legislature would not only deliberately *design* to depart from all precedent, and the established policy of the state, and without any reasons, or necessity apparent therefor locate and establish *that* seat of justice differently from all others, and

so *permanently grant* or *contract*, that it alone, of the many, could never be removed without *compensation* or *revolution!* The enactment in question may well be considered an eccentric instance of special legislation, if, as is claimed, the state by reason of it, was *intentionally* placed in such humble position of subserviency and obligation to an insignificant number of its citizens, for the trifling consideration and inducement afforded by an acre of land in a rural village, and five thousand dollars payable in materials and labor.

But aside from the foregoing considerations, it may be safely asserted, that there is nothing apparent in the language employed by the Legislature in the words of the enactment, from which it can be fairly inferred that any such intention existed, either upon the part of the law making power, or the plaintiffs, at the time of the transaction. The most that can be claimed is, that the *location* of the county seat, *permanently*, at Canfield, was made defendant upon the *donation* of a suitable lot of land, and the execution of the bond, for the payment of the five thousand dollars. It would seem strange that a Legislature on the one side, and the plaintiffs on the other, alike in the pursuit of a common object, actuated by a like *intent*, and without anything in the way to obstruct or hinder, in order to give expression to such intent, to accomplish such common purpose, should be reduced to such poverty of language as to be contented to embody such important design, in the word *permanently*, when the full sense and meaning of that word, might well be predicated of every dilapidated building, and *worm fence* in the state of Ohio.

Hunt v McMahon 5, Ohio, R. 132.

The case cited was decided and reported in 1831; and it is to be presumed that it was familiar to members of the Legislature of 1846, fifteen years later. It gave judicial construction to the word "permanent," as applied to structures on land, under the occupying claimant laws of Ohio, and the Court held that "a two story frame house, twenty by twenty-five feet; a log cabin, two wells of water, two log corn-cribs, a wagon shed, and *worm* fence consisting of fifteen thousand rails and upwards," were *permanent* improvements. If the *intention* as claimed existed, at the time of the passage of the act, to locate the seat of justice at Canfield *forever*, (borrowing the word "*forever*" from the *petition*, not from the *law*) it certainly shows on the part of both parties, a strangely exceptional forgetfulness of the familiar and formal words of a *grant* or *contract*, which it would be most natural to use, if such *intent* were present. The omission of them as part of the act can only be accounted for upon the hypothesis that a different intention was present with sufficient force

and power to neutralize and overcome the one claimed by the plaintiffs.

But, we may assume that the Legislature of 1846, intended to use in the act the word *permanently* in the sense of its ordinary meaning, unaffected by any judicial construction or definition; and in view of such assumption, the question would stand thus:—Webster defines the word "*permanent*" as follows: "Durable; lasting; continuing in the same state, or without any change that destroys the form or nature of the thing." The laws, like the character of God, are unalterably *permanent*. Human laws and institutions may be to a degree *permanent*, but they are subject to change and overthrow. We speak of a *permanent* wall or building, a *permanent* bridge, when they are so constructed as to endure long; in which examples, *permanent* is equivalent to *durable* or *lasting*, but not to *undecaying* or *unalterable*. So we say, a *premanent residence*, a *permanent intercourse*, *permanent friendship*, when it continues a long time without interruption."

This definition is entirely opposed to the claims of the plaintiffs, that by the term *permanently* as used in the act was meant *forever*. But no broader claim can be made by plaintiffs than that a *very grave doubt* arises concerning the intention of the parties in the use of the word chosen in order to express the duration, or manner of the location of said seat of justice, and if that be so, then the rule of construction is in no wise uncertain. It is very succinctly stated in the *Binghampton Bridge* case, 3, Wallace 75, as follows: "If on a fair reading of the instrument, reasonable doubts arise as to the proper interpretation to be given to it, those doubts are to be resolved in favor of the state, and when it is susceptible of two meanings, the one *restricting*, the other *extending* the powers of the corporation, that construction is to be adopted which works least harm to the state."

If then, the word *permanently*, as used in the act may be legitimately construed as meaning the same so far as *duration* is concerned, as the adjective *permanent* does when used to qualify wall, building, bridge or citizen in the definition above quoted, and at the same time be synonomous, in *another sense* with *forever*, as claimed, it follows that if the correct rule of construction is stated in the case last cited, and is to be applied in this case, in order to determine with what intent the word permanently was used in the enactment in question, the former meaning must be adopted as *restricting*, instead of *extending*, and therefore working the least harm to the state.

I pass now to an examination of the *language* used in the act of 1846, by which it is claimed something was *granted* to the plaintiffs, or by which a legislative *contract* was made with them.

1st. By examination it will be seen that by the first section of the act two things were done: a new county was created, and *its seat of justice was located at Canfield.* There is no other portion of the act, by which any attempt was made to locate or establish such seat of justice in any other manner, differing from its location and establishment by the provisions of said first section. Whatever period of duration was fixed for it, and whatever characteristic of stability was conferred, was by that section of the act. If it was intended to be so established as to be *forever* immovable; if any *grant* was made to the plaintiffs or those under whom they claim; or if anything amounting to the *legislative* side of any *contract* was stated, the same was intended and stated by the terms of said section of the act, and to it alone the plaintiffs must look for the maintainance of their claims in this case.

The seat of justice was established at Canfield by the first section of said act, in the same manner as they had previously been located and established under the laws of the state, passed for that purpose, and no more, nor no less *permanently;* and unless a fair construction of the language used amounts to an *agreement* on the part of the Legislature to irrevocably fix such seat of justice at Canfield, no *grant* or *contract* can be assumed to exist.

The design of the Legislature so far as the permanency of the establishment of the seat of justice at Canfield is concerned, is very apparent. Every seat of justice that had ever been established under the statutes of the state, had been *permanently* established, as contradistinguished from a temporary establishment thereof: that is, they had been fixed, without any intention at the time of their location to remove them; and leaving all questions of any future necessity for removal to be determined in the future, when circumstances which might demand it should exist. So in the case in hand, the seat of justice was fixed with no design at the time to change the location, but reserving the right to do so, should the necessity arise, either by reason of the non-procurement of the land required for county buildings, or of the fund with which to erect such buildings, as provided by the eigth section of the act. The case stood in precisely the same condition, as it would, if commissioners had been appointed as provided by the general statute then in force, who had gone upon the ground, located the seat of justice upon the Newton land at Canfield, had endeavored to agree upon terms of purchase of the land from Eben Newton and wife, and had failed to obtain the same. In such case, the *location* of the seat of justice was determined in *advance* of the procurement of the land. The land might, or might not be procured; that would de-

pend upon the willingness of the owner, to sell it at such price as would justify the purchase of it, or to sell it at all. If it could not be procured, together with money to erect county buildings, it was the duty of the commissioners to proceed to *relocate* the seat of justice at some other place, where land and money could be obtained.

So the Legislature of 1846, acting itself, without the aid of commissioners, selected Canfield as the place, located and established at it, the county seat, and the next object to accomplish, was to procure the land for the buildings, and the money to build them, without taxing the inhabitants of the new county for either purpose. At this juncture the *proprietors* and *citizens* of Canfield came forward, *donated* the land, (instead of selling it) and proposed to give a bond (to take the place of the "*residue*" of money obtained by the director by sales under the general statute, to be paid into the treasury) obligating themselves to pay five thousand dollars to erect county buildings.

The *donation* of the land and money was not in pursuance of any *agreement* that the Legislature should do anything more than had been already done by it, but what was thus done by the proprietors and citizens of Canfield, was in order to prevent the Legislature from *undoing* what it had already done, by relocating the county seat in such manner as that the land and money could be procured without taxation.

If this be not the true construction of the act, then it follows, that the seat of justice was not permanently located or established at Canfield by virtue of the provisions of its first section, and that its *permanency* of location was effected by its eighth section, It seems difficult to perceive how it can be contended that the first section of the act standing alone did not locate the county seat *permanently* at Canfield. No more direct or explicit language could have been chosen to express such act; and if it did not effect such location, in that case, I fear we have no permanently established county seats in Ohio.

But do the provisions of the eighth section *extend* in any manner those of the first section, in the direction of the *duration* or *permanency*? The eighth section was intended as a *limitation* of the first, and to reserve the right on the part of the Legislature to relocate the seat of justice if it became necessary; instead of being designed to fix the duration of an already permanent location. The situation was the same as if the commissioners appointed under the general statute had located a seat of justice on the land of an individual, and had then said, "it shall not however be considered permanently established there, unless such individual will sell the land needed for it." These words of the commissioners

would be a *limitation* and *restriction* of their prior act of location; so was the office and effect of the eighth section of the act in question, and for the same reasons.

In conclusion, so far as this branch of the case is concerned, I submit that there is an utter absence of anything in the act of 1846, showing any *intention* to withdraw the act of establishing the seat of justice of Mahoning county from the operation of the usual and established plan, adopted in 1803, and continuing to the present day; that no *contract* express or implied was ever created by the act in question: that there is an absence of any provision that the seat of justice should remain at Canfield for any *definite* length of time; that there is no declaration that it shall not be removed like any other county seat; that it was not, by any express or implied terms made an exceptional county seat: that the state did not sell it, nor trade it away for the acre of land, and the bond of five thousand dollars, and with it, yield up to the plaintiffs a portion, and an important portion of the sovereignty of the state; and that the rules of construction heretofore stated, when applied to the language of the act, render the claim that any *contract* ever existed regarding the location of the seat of justice in question, absurd.

SECOND.

The defendant further claims in this case, that no *contract* or *grant* was created by the act of February 16, 1846, for the reason that there were no persons, party or parties, that could legally accept a *grant*, or become a party or parties to a *contract* of the kind asserted.

By the provisions of the eighth section of the act, it was either the *proprietors*, or the citizens of Canfield who were authorized to give the bond with good and sufficient security for the five thousand dollars; and it was the *citizens* of Canfield who could *donate* the "suitable lot of ground on which to erect public buildings." It becomes a nice question which of the two classes named, are to be the *grantees* or *contractees* to receive the benefits intended to be conferred; and in case the *proprietors* gave the bond and the *citizens* gave the land, whether they were to share *equally* in the grant or franchises claimed; or if not eqally, then how? Before undertaking however, to discuss these somewhat difficult and unprofitable questions it may be well to inquire whether either, or both classes could legally accept and hold a *legislative grant*, or become parties to, and hold the benefits of a *legislative contract*.

The *proprietors* of Canfield consisted of those who owned the land

of that town, and they may have been residents and citizens of Canfield, or of some other township of the county, and some of them may have resided in, and have been citizens of other states, or of some foreign country. If such was the case, (as it well might be), and *they* gave the bond, and, therefore, were all entitled to share in the *contract* or *grant*, and take some franchise in the seat of justice, the *ownership* of it might have become quite extensively distributed over the world, in fact, it might *all* have been held by citizens of England, France, or Russia! I am strongly inclined to the opinion that such a possible result would be so repugnant as to have a potent tendency to influence the courts to hold that it was not the intention that the proprietors of the township should become parties to a legislative grant or contract of the kind claimed, in this instance.

But how is it with the *citizens* of Canfield who were to donate the ground? They could have no *successors* except the other citizens who should become such after them, Those who should come after them might consist of the children of those mentioned in the act, or of them, and such persons as should come from other places into Canfield. Would all those share equally in the grant or contract? Or, if only those who were citizens at the time of the grant, and their heirs, what would become of the franchises, when all such citizens and all their heirs should become extinct? Would the *franchise* held, then revert to the state, or could the last survivor devise it to an outside legatee, and thus start the ownership in a new line of descent?

It will readily be seen that the farther these inconsistent speculations are followed, the more confused they become.

The farther inquiry is also suggested, whether if any of those citizens should remove from Canfield to some other county or state, would they carry the *franchises* with them, and thus render it possible that interests in the seat of justice of Mahoning county could be held as property in other counties and states, and even in foreign countries? Or, is the franchise claimed, *local* in its character, and simply attached to the land or property which may have been owned at Canfield by the plaintiffs at the time of the grant? In that case does it "*run with the land*," and go to the purchaser of it; and in case the land should be sub-divided and sold to many different persons, would each take a portion of the *franchise* co-extensive with his purchase?

The rights growing out of a legislative grant to, or contract with a corporation, or an association of persons, not incorporated, but definitely ascertained, or an individual engaged in some matter or business in, or

concerning which, the subject matter of the grant or contract may be of benefit, can readily be understood; as in the *Dartmouth College case*, and many others that will be cited by plaintiffs, which will all be found however, to consist of grants to, and contracts with private individuals, in their *individnal capacity*, or private corporations; but it is very difficult to understand how an *indefinite* number of individuals, under the denomination of *citizens* or *proprietors*, unconnected with any business or other matter so that the subject matter of the grant may be utilized in the *common pursuit* or *joint business*, can take anything by it, partaking of the nature of property.

Certain cases will be referred to on the part of the plaintiffs, as supporting the claim that plaintiffs and those under whom they claim could legally take and hold the subject matter of grant in question. It will be seen, however, that all the cases referred to, are those in which it was claimed that certain legislative grants, immunities or privileges had been conferred upon public or private corporations, or individuals, concerning other matters than the governmental machinery, or institutions for the due administration of justice, within the state.

The case of *Matheny v. Golden* 5, Ohio St. R. 361, is much relied upon. In that case the question before the Court grew out of an important grant to the President and Trustees of the Ohio University, "for the sole use, benefit and support of said university forever." The university had been previously incorporated, and the Legislature of Ohio, of 1804, in establishing a university, and endowing it by a grant of certain lands, provided that "the lands in the two townships appropriated and vested as aforesaid, with the buildings which are or may be erected thereon, shall forever be exempted from all state taxes." Here was a proper party without doubt, and here too was a grant in unmistakable language of an immunity *running with the land.* There never could arise any question as to who should share in the immunity, or in its benefits. The *Dartmouth College case* relied upon, so far as this question is concerned, is the same. So too, the recent cases of *Farrington v. Tennessee* 5, Otto 679, *New Jersey v. Lard* 5, Otto 104, and *Murray vs. Charleston* 6, Otto 432.

In the case at bar, assuming the grant, there was no greater or different immunity franchise or privilege granted to the proprietors or citizens of Canfield, than was to all the proprietors and citizens of the whole county.

But the plaintiffs, to maintain their claims, must controvert that proposition and how stands it? It cannot be successfully maintained

that the seat of justice of the new county was established at Canfield for the benefit alone of the proprietors and citizens of that town. It must be conceded at least, that the object of the Legislature in the erection of the new county, as well as in the location and establishment of its seat of justice, was to accommodate and benefit alike, *all* the inhabitants of the new county; and that when the donations of the land and money were made, it was in pursuance of such design and object, and that the same were donated in behalf of all such inhabitants of the county. That being the case, *all* would share in the immunities granted, and every inhabitant of the county would be interested in any franchise growing out of the grant, and therefore all of such inhabitants would be parties to it. That consideration presents the question as to how far the immunities and privileges might be controlled by an insignificant minority of the parties, to prevent the removal of such seat of justice, when demanded by the majority,—an inquiry, however, that I do not feel called upon to pursue in this case.

It will be found that in all the cases which can be relied upon as having any relavancy to the case at bar, so far as the question of parties to any legislative grant or contract is concerned, the grantees in such grant, or the parties to such contract were unmistakably defined and ascertained: being either grants to certain inhabitants or officers of a town, or to the town itself, and the grant only coextensive with the town, or grants to certain inhabitants of a district, or city, or to the district or city, coextensive only with the district or city; or grants of land or property, or immunities connected with land or property by whomsoever it might be held.

But in the case in hand, while it must be conceded that whatever grant or contract was made, it was one not confined in its benefits and immunities to the town of Canfield alone, but was coextensive with the county, it is nevertheless contended that a very few of the beneficiaries residing in one part of the county may exercise control over such benefits and immunities to the exclusion of all others interested therein. This is not a case in which it can be affirmed that all of the parties interested are before the Court, as would be the case in the instances above mentioned.

It would scarcely be contended that a grant of the nature claimed could be maintained if it had been made to the *republicans*, or to the *democrats* of Canfield,—yet either would have been as definite so far as grantees were concerned, as if made to the proprietors or citizens of Canfield, in fact more so, for the reason that such party designations convey the ideas of organization and unity of purpose.

Suppose the eighth section of the act of 1846 had read "That before the seat of justice shall be considered permanently established at Canfield, the carpenters and joiners thereof shall erect and complete a court house for the use of the county," and the mechanics named had built such court house as required,—would it be claimed that they had thereby become invested with the ownership of some franchise in such seat of justice,—a species of *property*—the right to which could be asserted and maintained in a court of justice? Such grant would lack none of the elements claimed for the one asserted: the consideration would be as valuable and as definite; the parties would be as certain and as readily ascertained; and the power to confer such franchise or right would be as apparent in the one instance as in the other, for if the legislature could confer such grant upon one class of private persons, it certainly could upon another class, consisting of more or less.

The question arose, and was carefully considered as long ago as 1811, in the State of New York, in the case of *Jackson ex. dem. Cooper v. Cory* 8, *Johnson* 385, in the case of a grant of a lot of land to the *people* of the county of Otsego on which a court house and jail were built by the supervisors in 1792, and used by the county. In 1806, by an act of the legislature the supervisors were authorized to sell the court house and jail *with the lot of land on which they stand*, which they did accordingly. In an action of ejectment by the original granter of the lot of land, against the purchaser from the supervisors, it was held, "that the *people* of the county had no capacity to take by grant, and that the deed was void." The Court say:—"The *people of the county of Otsego* had no capacity to take by grant. They were not a corporate body known in law. It is a settled rule of the common law, that *a community not incorporated*, cannot purchase and take in succession. * * * A grant to be valid must be to *a corporation, or some person certain must be named*, who can take by force of the grant, and who can hold either in his own right, or as a trustee."

This case has not been overruled or questioned.

THIRD.

I have heretofore been speaking of "*seats of justice*," and *county seats* as though there could be no misunderstanding as to their nature or character: that they are necessary factors in the organization of counties, so as to afford the place and means for the transaction of all official business of the counties, and of the state within the counties: that a *county*, to-

gether with its seat of justice, and all its other elements is a civil institution, and part of a political organization, formed and instituted for governmental purposes; and that the people of the whole state in which the county is located are equally interested in it, and in the offices and functions it is established by the state to perform; one of the most important of which is, the convenient administration of public justice.

It may not be out of place to cite some of the holdings of the Supreme Court of Ohio, upon this subject, inasmuch as the question has reference to that state. In *C. W. & Y. R. R. Co. v. Commissioners* of *Clinton county*, L. Ohio St. R. 77, Ranney J. says: "But what is a county? It is not *imperium in imperio*, in any sense. It is invested as such, with no single attribute of sovereignty; and for reasons already stated, it cannot be. Rightly considered, it is a mere instrumentality, a means in the hands of the legislative power to accomplish its lawful purposes; and to this extent, a creature in the hands of its creator, subject to be moulded and fashioned as the ever varying exigencies of the state may require. It would seem to follow, that it may from time to time be clothed with such duties of a local administrative character, not vested elsewhere by the constitution, as the General Assembly may see fit to direct. And so they have always been treated and used. Scarcely a year of our legislative history has passed which has not added to, or taken from them powers and duties of this character. The Legislature might perform their duties directly, but for the most obvious reasons, could not as understandingly and efficiently do it, as by the employment of these sobordinate agencies." Again, page 95 S. C. the Learned Judge says: "These political organizations are created for no private object. They are, as we have seen, public instrumentalities invested with such local administrative functions, as the Legislature sees fit from time to time to confer upon them; * * *. From an early period, the whole power of laying out, establishing and keeping in repair, by a local tax, the public roads, has been confided to the several counties. For this purpose they have taken private property and levied taxes, and the power to do so has never been questioned by any one."

In *Commissioners of Hamilton county v. Mighels* 7, Ohio St. R. 109, the question of what is a county in Ohio was again answered by the Supreme Court. Brinkerhoff J. said:—"For the purpose of maintaining this action, an effort has been made in argument to assimilate counties to natural persons and municipal and other corporations proper. * * * *. And it is freely admitted that if counties are in all material respects like municipal corporations proper, and may be fairly classed with

them, then this action ought to be maintained. But how is the fact? This question is vital, and on its solution the case must depend.

As before remarked, municipal corporations proper are called into existence, either at the direct solicitation, or by the free consent of the people who compose them.

Counties are local subdivisions of a state, created by the sovereign power of the state, of its own sovereign will, without the particular solicitation, consent, or concurrent action of the people who inhabit them. The former organization is asked for, or at least assented to by the people it embraces: the latter is superimposed by a sovereign and paramount authority.

A municipal corporation proper is created mainly for the interest, advantage and convenience of the locality and its people: a county organization is created almost exclusively with a view to the policy of the state at large, for purposes of political organization and civil administration, in matters of finance, of education, of provisions for the poor, of military organizations, of the means of travel and transport, and especially for the general administration of justice. With scarcely an exception, all the powers and functions of the county organizations have a direct and exclusive reference to the general policy of the state, and are, in fact, but a branch of the general administration of that policy. * * * The county organization, substantially similar in all its general features and functions, has existed in England from the earliest times, and in all the states of this union, with perhaps one or two exceptions, more nominal than real, from the period of their settlement."

In the case of *Boalt et al, v. Commissioners of Williams county et al*, 18 Ohio R. 16, Avery J. says:—"Now, a county, with all its officers, is a necessary organization for *political purposes*, under the government of the state. Its officers all take an oath to perform their official duty, which is in each case circumscribed and defined by public law. It can, with its funds, raised by taxation, or otherwise, construct and own, whatever may be required within its limits, a bridge, a *court house*, public offices, jail or poor house; but with reference to none of them is it treated like a private person. For though there is no exemption by any legislative act, that I am aware of, who supposes that such property, like that belonging to individuals, can be sold upon execution at law?"

In *Hunter et al, v. Commissioners of Mercer county*, 10. Ohio St. R. 515, Sutliff J. says:—"The county is not a corporation, but a mere political organization of certain of the territory within the state, particularly defined by geographical limits, for the more convenient administration of

the laws and police power of the state, and for the convenience of the inhabitants. Such organization is invested with certain powers delegated to it by the state for the purposes of civil administration; and for the same purpose it is clothed with many characteristics of a body corporate. A county seat may not improperly be called a *quasi* corporation, for it is in many respects like a corporation."

Passing from the cases in Ohio, it will be found that they are supported by the courts of other states. In *Granger v Pulaski, &c.*, 26, Arkansas R. 37, the Court say: "Counties are a political division of the state government, organized as part of its machinery, like townships, school districts and kindred subdivisions. They do not derive any ~~of~~ of the powers they possess by special charter. Their functions are wholly of a public nature, and their creation a matter of public convenience and governmental necessity, and in order that they may better subserve the public interest, certain corporate powers are conferred upon them."

This general proposition will be found to be sustained by the cases, without any dissent so far as I have been able to examine, viz: corporations, such as counties, are properly denominated public, or *quasi* corporations, for the reason that they are but parts of the machinery employed in carrying on the affairs and business of the state, and that the charters or laws under which they are created, may be changed, modified, or repealed, as the exigencies of the public service, or the public welfare may demand. That they are the mere auxiliaries of the state in the important matters of municipal government.

McKim vs. Odom, 3, Bland, 407. *St. Louis v. Allen*, 13 Missouri 400. *Tarmonth v. Skillings*, 45, Maine, 141. *Schools v. Tatman*, 13 Illinois 27. *School &c. v. School &c.*, 14 Conn., 469. *Bridge Co. v. East Hartford*, 16 Conn., 172. *Hampshire v. Franklin*, 16 Mass., 76. *North Hempstead v. Hempstead*, 2, Wendell 109. *Montpelier v. East Montpelier*, 29 Vermont, 20. *Waring v. Mayor &c.*, 24 Alabama, 701. *Mayor &c. v. Plate*, 15 Maryland, 16. *Ashly v. Willington*, 8, Pickering, 524. *Denton v. Jackson*, 2, Johns, Ch'y. R. 320. *Ray county v. Butler*, 49, Missouri R. 236.

So the text writers, Cooley Cons't. Lim. page 389. 2. Kent's Com. (12th Ed.) 305 Augell & Ames Corp,)10th Ed.) sec. 31.

The same doctrine will be found in the decisions of this Court. In *State of Maryland v. B. & O. R. R. Co.*, 3 Howard, 534. Tany C. J. says:—The several counties are nothing more than certain portions of territory into which the state is divided for the more convenient exercise of the powers of government. They form together one political body in which the sovereignty resides."

But this whole matter has been most thoroughly and ably examined and settled by this Court, since the commencement of the case at bar, in the case of *Commissioners of Laramie connty v. Commissioners of Albany covnty, et al.* 2 Otto, 307.

If these authorities properly present the nature and character of the *subject matter* of the pretended contract between the Legislature of the State of Ohio, of 1846, and the plaintiffs; and if it be, as claimed by the defendant, a *subject matter* in which no *corporation*, *association of individuals*, or *private individual* can acquire any special rights or privileges, not shared alike by every other corporation, association or individual of the state, it would follow that no binding *contract* could be made or exist concerning such subject matter, and no *grant* of any portion of it could be made to any of such parties.

The plaintiffs must stand upon the novel, and somewhat startling doctrine, that they, as mere individuals, even without any formal association of themselves together as a corporate body, or otherwise, except in so far as a *community* of *interests* may bind them together, actually own, and hold as such, a *property* of some sort, in, or connected with such "necessary organization for political purpcses, under the government of the State." That while the state in the exercise of its sovereignty may change, modify and even abolish the *county* for which the seat of justice was established, and thus destroy all the purposes for which it could be possibly used, yet that the sovereignty of the state is so restricted and limited in consequence of the *bargain*, that it cannot destroy a *small part* of the *whole thing* over which it has unlimited sovereign control.

It would sound strangely for the plaintiffs to contend that the Legislature of Ohio was powerless to abolish the county of Mahoning entirely by reattaching the portions of it taken from the other counties to them, in the constitutional manner, for the reason that the Legislature of 1846, has *permanently* established a seat of justice at Canfield, and granted certain franchises to individuals concerning it, and that therefore the *county* of Mahoning must be *forever* maintained in order to perpetuate the seat of justice for it at Canfield, in order that plaintiffs may enjoy, *permanently*, their *franchises* or *property* connected with it.

FOURTH.

I maintain further, that the *contract* or *grant* claimed by plaintiffs in this case is not within the protection of section ten, of article first of the Constitution of the United States, even if the Court should be forced to

the conclusion that the grant or contract was made as broadly as claimed by plaintiffs.

All that has been submitted under the preceding subdivision, is material only so far as this branch of the inquiry is concerned; and assuming the grant or contract to have been made concerning that *subject matter*, what is its significance or value, to render the law of April 9th, 1874, removing the seat of justice to Youngstown unconstitutional, as impairing the obligation of such legislative contract, or grant?

The proposition necessarily affirmed by the plaintiffs is, that having shown a grant or contract, with all that is implied thereby, it embraces and comprehends the political relations, and governmental institutions, as between the government and a portion of its citizens; and that such grant or contract may be sustained, having for its subject matter a right, franchise or immunity growing out of such governmental or political institution, or connected therewith.

This is not the first instance of such a claim having been made. It was most earnestly and ably presented in the leading and celebrated *Dartmouth College case* 4, Wheaton 518, a case, strange to say, that is relied upon by the plaintiffs in this case.

In commenting upon the claim in that case, Marshall Chief Justice said:—"It has been argued that the word *contract* in its broadest sense, would comprehend the political relations between the government and its citizens, would extend to offices held within a State for State purposes, and to many of those laws concerning civil institutions which must change with circumstances, and be modified by ordinary legislation, which deeply concern the public, and which to preserve good government, the public judgment must control.

That even marriage is a contract, and its obligations are affected by the laws respecting divorces. That the clause in the constitution, if construed in its greatest latitude, would prohibit these laws. Taken in its broad, unlimited sense, the clause would be an unprofitable and vexatious interference with the internal concerns of a State, would unnecessarily and unwisely embarass its legislation, and render immutable those civil institutions which are established for purposes of internal government, and which, to subserve those purposes, ought to vary with varying circumstances. That as the framers of the constitution could never have intended to insert in that instrument a provision so unnecessary, so mischievous and so repugnant to its general spirit, the term contract must be understood in a more limited sense. That it must be understood as intended to guard against a power of at least doubtful utility, the abuse of

which had been extensively felt; and to restrain the legislature in future from violating the right of property. That anterior to the formation of the constitution, a course of legislation had prevailed in many, if not in all of the States, which weakened the confidence of man in man, and embarassed all transactions between individuals, by dispensing with a faithful performance of engagements. To correct this mischief by restraining the power which produced it, the State legislatures were forbidden "to pass any law impairing the obligation of contracts," that is, of contracts respecting property, under which some individual could claim a right to something beneficial to himself; and that since the clause in the constitution must, in construction receive some limitation, it may be confined, and ought to be confined, to cases of this description; to cases within the mischief it was intended to remedy.

The general correctness of these observations cannot be controverted. That the framers of the constitution did not intend to restrain the States in the regulation of their civil institutions, adopted for internal government, and that the instrument they have given us is not to be so construed, may be admitted. The provision of the constitution never has been understood to embrace other contracts than those which respect property, or some object of value, and confer rights which may be asserted in a court of justice. It never has been understood to restrict the general right of the legislature to legislate on the subject of divorces.

* * * * * * * *

If the act of incorporation be a grant of political power, if it create a civil institution to be employed in the administration of the government, or if the funds of the college be public property, or if the State of New Hampshire, as a government, be alone interested in its transactions, the subject is one in which the legislature of the State may act according to its own judgment, unrestrained by any limitation of its power imposed by the constitution of the United States.

But if this be a private eleemosynary institution, endowed with a capacity to take property for objects unconnected with the government, whose funds are bestowed by individuals on the faith of the charter; if the donors have stipulated for the future disposition and management of these funds in the manner prescribed by themselves; there may be more difficulty in the case, although neither the persons who have made these stipulations, nor those for whose benefit they are made, should be parties to the cause."

In the same case Washington J. says: "In respect to public corporations which exist only for public purposes, such as towns, cities, &c.,

the legislature may, under proper limitations, change, modify, enlarge or restrain them, securing, however, the property for the use of those for whom, and at whose expense, it was purchased."

In the case of *East Hartford v. Hartford Bridge Co.* 10 Howard 511, Woodbury J. says:—"Supposing then, that a ferry may in some cases be private property, and be held by individuals or corporations under grants in the nature of contracts, it is still insisted here, that the ferry across a large navigable river, and whose use and control were entirely within the regulation of the colonial legislature, and came from it, would be a mere public privilege or public license, and a grant of it not within the protection of the constitution of the United States as a matter of contract.

But it is not found necessary for us to decide finally on this first and more doubtful question, as our opinion is clearly in favor of the defendant in error on the other question; namely, that the parties to this grant did not by their charter stand in the attitude towards each other of making a contract by it, such as is contemplated in the constitution, and as could not be modified by subsequent legislation. The legislature was acting here on the one part, and public municipal corporations on the other. They were acting, too, in relation to a *public object*, being virtually a highway across the river, over another highway up and down the river. From this standing and relation of these parties, and from the *subject matter* of their action, we think that the doings of the legislature as to this ferry must be considered rather as *public laws* than as *contracts*. *They related to public interests.* They *changed* as those *interests* demanded. The grantees likewise, the towns being mere organizations for *public purposes*, were liable to have their public powers, rights and duties *modified* or *abolished* at any moment by the legislature.

They are incorporated for *public*, not private objects. They are allowed to hold privileges or property only for public pusposes. The members are not stockholders, nor joint partners in any corporate estate, which they can sell or devise to others, or which can be attached and levied on for their debts.

Hence, generally, the doings between them and the legislature are in the nature of *legislation* rather than *compact*, and subject to all the legislative conditions just named, and therefore to be considered as not violated by *subsequent legislative changes.*

It is hardly possible to conceive the grounds on which a different result could be vindicated, without destroying all legislative sovereignty, and checking most legislative improvements and amendments, as well as *supervision over its subordinate public bodies.*

Thus, to go a little into details, one of the highest attributes and duties of a legislature is to *regulate public matters with all public bodies*, no less than the community, from time to time, in the manner which the public welfare may appear to demand.

It can neither devolve these duties *permanently* on other public bodies, nor *permanently* suspend or abandon them itself, without being usually regarded as unfaithful, and, indeed, attempting what is wholly beyond its constitutional competency. It is bound, also, to continue to regulate such public matters and bodies, as much as to organize them at first. Where not restrained by some constitutional provision, this power is inherent in its nature, design, and attitude; and the community possess as deep and permanent an interest in such power remaining in it and being exercised by the legislature, when the public progress and welfare demand it, as individuals or corporations can, in any instance, possess in restraining it." * * * * * *

And though *private interests* may intervene, and then should not be injured except on terms allowed by the constitution; yet public interests in one place or corporation may be affected injuriously by laws, without any redress, as legislation on public matters looks to the whole and not a part, and may, for the benefit of the whole to the injury of a part, change what is held under it by public bodies for public purposes. The legislature, therefore, could not properly devest itself of such control, nor devolve it on town or counties, nor cease from any cause to exercise it on all suitable occasions.

Its members (of the legislature) are made by the people agents or trustees for them on this subject, and can possess no authority to sell or grant their power over the trust to others.

Nor can the public be estopped by such attempts, since the acts of their agents are to be for the public, and for its benefit, and not for themselves individually, and are under a limited authority or jurisdiction, so as to be void, if exceeding it."

I have drawn somewhat largely from the opinion of the Court in this case, for the reason that in my judgment, it answers fully the claims made by the plaintiffs, and is decisive of the questions presented by the record in the case in hand.

The proprietors and citizens of Canfield could only hold any right, privilege or franchise, that could be granted by the legislature concerning the seat of justice of Mahoning county, for "*public purposes.*" They could not be "*stockholders,*" nor "*joint partners*" in them, or in either of them, nor could they "*sell* or *devise*" them to others, nor could they be

"attached or levied upon for their debts." Whatever interests or rights were taken by such proprietors or citizens of Canfield under the legislation of 1846, were held by them, for *public purposes.* The county seat could only be used for public purposes, and as a means for the administration of public justice, and the transaction of the public business of the county, and of the State within the county. It could not be applied to any mere private purpose, by which any profit, or mere advantage should accrue to one citizen of the county, which would not also be shared by every other. In short, it may be said in the language of Woodbury J. on page 536, of the case last cited, "*But every thing here is public.*" Legislatures do not, nor never did create counties and establish seats of justice within them to subserve any mere private object, or in order to benefit a portion of the inhabitants of the county to the exclusion of the others. It would be a most absurd contention, that when the convenience and necessities of nine tenths of the inhabitants of a county demanded the location of the seat of justice at a particular place, for the more convenient and inexpensive transaction of the public business, that its removal could be prevented by the other one tenth upon the ground that the legislature, the members of which are mere "agents or trustees of the public," had power or authority to sell or grant their power or authority over the trust to plaintiffs and their successors forever, in such manner, and to such extent that they could set at defiance such reasonable demand.

If the plaintiffs have the right, as contended, to have the county seat maintained at Canfield. they have an equally perfect right to insist that it shall be maintained and continued on the specific lot of land donated by them for it: for if the legislature has not authority to remove it ten miles from such lot, it is difficult to perceive what authority it could have to remove it one mile therefrom. Hence, if the lot donated should become wholly unsuitable, so that a court house and offices for the county could not be maintained thereon, as a consequence of the plaintiffs' contention, the legislature would be so restricted in its authority concerning such public matter, that it would be powerless to provide a suitable location for such purpose, and the county would be compelled to do without such necessary appliances for the transaction of its public business, at least, until the consent of the plaintiffs could be obtained to a change of location. In other words, if the contract asserted be one which the legislature of 1846 possessed the power to make, it may be asserted and enforced to the full extent, as to all its obligations, and the consequences stated, with many others equally disastrous might follow. Hence the rea-

son of the holding in the case last mentioned (page 534.) "*It* (the legislature) *is bound to continue to regulate such public matters and bodies*, as much *as to organize them at first.*"

See Taney C. J. in *Charles River Bridge v. Warren Bridge* 11 Peters 547, 548, where he says:—"The continued existence of a government would be of no great value, if by implications and presumptions, it was disarmed of the powers necessary to accomplish the ends of its creation; and the functions it was designed to perform, transferred to the hands of privileged corporations." It might have been added, or to individuals or a select and privileged few.

A leading case on the subject is that of *Gosler v. The Corporation of Georgetown*, 6 Wheaton 596–598, in which it was held by Marshall C. J. that a city with some legislative power as to by-laws, streets, &c., could, after establishing a graduation for its streets, and after individuals had built in conformity thereto, change materially the grade so established: and Woodbury J. in *East Hartford v. Hartford Bridge Co.* 10 Howard 535, cites that holding with approval, and adds:—"This case appears to settle the principle that a legislative body cannot part with its powers by any proceeding so as not to be able to continue the exercise of them. It can and should exercise them, again and again, as often as the *public interests* require. And though private interests may intervene, and then should not be injured except on terms allowed by the constitution; yet public interests in one place or corporation may be affected injuriously by laws, without any redress, as legislation on *public matters* looks to the *whole* and not a *part*, and may, for the benefit of the whole to the injury of a part, change what is held under it by public bodies for *public purposes*. *The legislature*, therefore, could not properly devest itself of such control, nor devolve it on towns or counties, nor cease from any cause to exercise it on all suitable occasions."

In *Butler v. Pennsylvania* 10, Howard 416, Daniel J. in delivering the opinion of the court says;—"The contracts designed to be protected by the tenth section of the first article of that instrument (constitution of the United States,) are contracts by which perfect rights, certain definite, fixed private rights of property, are vested. These are clearly distinguishable from measures or engagements adopted or undertaken by the body politic or State government for the benefit of all, and from the necessity of the case, and according to universal understanding, to be varied or discontinued as the public good shall require."

This was a much stronger case for the application of the principle contended for by the plaintiffs, than the one in hand. It was the case of

an appointment to an office in the State of Pennsylvania, which, by the then existing law of that State, was to be held for one year, with a compensation of four dollars per day; and it was held by the court that such appointment did not amount to a contract by the State thus to employ and pay the officer during the year; and that a law which repealed the former act, under which the appointment was made, removed the officer, and changed the rate of compensation, did not impair the obligation of any contract.

I trust it will not be considered supererogatory to refer the court to some of the holdings of the State courts of last resort, when this question was before them. In *Trustees &c v. Rider* 13 Conn. 87, the court said: —The *subject* of prohibition is every contract relating to property, or some object of value, and which confers rights that may be asserted in a court of justice."

"The prohibition in the federal constitution against the passage of laws impairing the obligations of contracts, has reference to contracts by which obligations are imposed, and rights of property are vested or secured. It was not the purpose of the provision to impose on the courts the duty, either of interposing between the legislature and the citizen in matters of pure governmental concern, of trammeling the States in the exercise of their general political powers, or of stamping municipal regulations for the time being, with the seal of irrevocability." *The People v. Roper* 35, New York 629. The following language of Porter J., who delivered the judgment of the court in that case, is so peculiarly pertinent to the case at bar, that I feel justified in transcribing it. He says:— "The *inducements* held out in the statute of 1854 were tendered by the government and accepted by the citizens, as *incident* to a *system* which the State had power to revoke. There are few of the various rights, thus springing as mere *incidents* from the operation of general laws, which can be placed on a footing of absolute security against all future legislation. Instances occur, from time to time, of provisions embodied in our public statutes, beneficial to meritorious *persons* and *classes*, which power is inconsistent with the common welfare and prejudicial to the general interests of society. It would be alike unfortunate and dangerous to construe such laws, as in the nature of civil contracts with each person benefitted by their provisions; when they are manifestly designed as mere ordinances of the law-making power, on matters pertaining to the *general interest*, and subject, from their very nature, to future amendment or revocation, by the authority to which these interests are committed as a *continuing charge*."

In the case of *Billings v. Hall*, 7 California 1, it is said:—"All questions of *property* are within the jurisdiction of the respective *States*, and the individual members thereof, in forming a government, are not to be considered as contractors with the government thereby ordained in the sense in which that term is employed in the constitution." See also, *State v. Paul*, 5 R. Island, 185.

"A State legislature cannot abandon the police power, or give a vested right to its exercise by a corporation or individual." *Dingman v. People*, 51, Ill. 277.

We come now, to a series of cases in which the subject matter was the same as the one under consideration, and the same question was before the courts.

In *Armstrong v. Board of Commissioners, &c.*, 4 Blackford (Indiana) 208, the question arose as to the constitutionality of an act of the legislature of the State of Indiana, passed in 1835, under which commissioners were appointed to *relocate* the seat of justice of Dearborn county, which had been located under an act passed in 1827, by commissioners duly appointed under it, and who were authorized to receive donations of land and money. The act also provided, "that as soon as the public buildings were completed at the designated place, that place should *forever* thereafter be the *permanent* seat of justice of the county." The commissioners fixed the seat of justice at Lawrenceburgh, and received from certain individuals an obligation conditioned for the building of a court house there, of a certain description. This was a donation made to influence the location at the place named. The court house was built accordingly by the donors, the obligors named in the bond, at an expense of twenty-five hundred dollars,

The commissioners appointed under the act of 1835, relocated the seat of justice at the town of Wilmington. There was no provision made by the act under which this was done to repay to those who built the court house at Lawrenceburgh, the money they expended for that purpose.

The court held the last named act constitutional and valid.

The following general propositions are fully sustained by the cases following them, namely:—The legislature of a State may remove the seat of justice of any county from one place to any other place in the county, notwithstanding commissioners appointed to select the place have made a contract for the purchase of lands for the site, or have received donations from those interested in the location. The designation of a place in which the courts of a county shall be held, the mode of making the

selection, and of appointing the persons to act on behalf of the public in procuring or disposing of land for these purposes, or erecting the requisite buildings, are matters of *political* arrangement and expediency, and necessarily the subjects of *legislative discretion*.

Alley v. Denson, 8 Texas R. 297. *Adams v. Logan* 11 Illinois R, 336; *Harris v. Shaw*, 13 Ill. R. 456; *State v. Jones*, 1 Iredell, 414; *Elwell v. Tucker*, 1 Blackford, 385; *Hambrick v. House*, 17 Georgia 56; *Armstrong v. Commissioners, &c.* 4 Blackford 208; *Moses v. Kearney*, 31 Arkansas, 261.

As bearing upon the general question reference is further made to the following cases: *Marietta v. Fearing* 4 Ohio R. 432; *People v. Morris*, 13 Wendell, 329: *Philadelphia v. Fox* 64 Penn. St. 180, Story's Com. Const. Secs. 1392, 1393; Cooly's Con. Lim. 191, 203; *Twiford v. Alamakee Co.* 4 Greene (Iowa), 60; *Terrett v. Taylor*, 9 Cranch, 51; *Charles River Bridge v. Warren Bridge*, 11 Peters, 496.

Respectfully submitted,

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Counsel for Defendant.

SUPREME COURT of the UNITED STATES.

EBEN NEWTON, et als.

vs.

THE BOARD of COUNTY COMMISSIONERS

of Mahoning County, Ohio.

SUPPLEMENTAL ARGUMENT FOR DEFENDANT,

—BY—

THOS. W. SANDERSON.

News Print, Youngstown, Ohio.

Supreme Court of the United States.

EBEN NEWTON, et als.

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THE BOARD of COUNTY COMMISSIONERS of Mahoning County, Ohio.

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FIRST.

The first additional claim I shall submit is, that if any contract was entered into, by and between the State, through its legislature of 1846, and the proprietors or citizens of the town of Canfield;

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or if the terms and provisions of the act of February 16th, 1846, under which plaintiffs claim may be construed as a contract, or as a grant of some right or franchise, as is claimed,—my proposition is, that to the extent that the act undertook to make a contract, or a grant, of the nature claimed, the act was *unconstitutional* and *void*, and conferred no rights upon the plaintiffs, or those under whom they claim, such as are insisted upon in this case.

That if any such contract was entered into or any such grant intended or made, the same was entered into, or conferred, *in view* of, and *subordinate* to whatever *constitutional power* then existed in the constitution of the State,—or want of constitutional power, appertaining to, or concerning the subject matter of such contract or intended grant: that such constitutional power, or the want of it, entered into, and became a part of the contract or grant to the same extent as though it was in direct terms embraced in, or unequivocally referred to by the letter of the enactment—out of which it is claimed such contract or grant arose: that whatever was included in, or conferred by the contract or grant was subject to such constitutional power or the want of it, and taken by those claiming to be contractees or grantees subordinate thereto.

9 Ohio 823.

In my former brief it was assumed that the Legislature of Ohio at the time of the enactment of the act of February 16th, 1846, erecting the county of Mahoning, and fixing the seat of justice at the town of Canfield, had the power under the State constitution of 1802, not only to create new counties and change county lines, but in addition, to remove county seats, before permanently located, either by proceedings under the general statute then in force, or by special local enactment for the particular case; and to legislate generally concerning such matters, within the restriction imposed by the constitution as to the minimum extent of territory that should be contained in every county.

But, I also claim, that the State legislature possessed no power not in terms, or by reasonable implication conferred, with reference to these matters and powers not thus conferred by the constitution

upon the legislature, were reserved to the people. What was conferred?

The only provision of the constitution of 1802, relating to the subject, is the following:

"No new county shall be established by the general assembly, which shall reduce the county or counties, or either of them, from which it shall be taken, to less than four hundred square miles; nor shall any county be laid off, of less contents. Every new county, as to the right of suffrage and representation, shall be considered as a part of the county or counties from which it was taken, until entitled by numbers to the right of representation."

Constitution of 1802, Art. 7, Sec. 3.

The first time that I am aware of that the question of the extent and scope of the power of the legislature under the above constitutional provision, came before the Supreme Court of Ohio, was in 1842,—in the case of the *State v. Choate*. It was there held:—

"The constitution of this State authorizes the general assembly to create new counties, and to change or alter the boundaries of old ones. The only limit to this power is a prohibition against creating a new county of less, or the reduction of an old county to less than an area of four hundred square miles. There is nothing in the instrument whatever, that further restricts this right of the general assembly, and it is not necessary to hold, nor should it be held, by any implication that does not force itself irresistably upon the mind, that this convenient power of modifying the limits of counties, is to be restricted beyond the letter of the constitution itself. It is a prerogative belonging to the sovereignty of the State, and no sovereignty can be presumed to have parted with any power essential to the public welfare, nor can it be adjudged to have parted with it, without express and unequivocal evidence showing the fact affirmativcly."

State v. Choate, 11 Ohio Rep. 512.

In 1853 the Supreme Court of Ohio again held:

"Under the constitution of 1802 it was always supposed that the legislature had power to erect new counties out of those already established, only limited by the provision that required all of the counties to be of a certain extent of territory. * * * * Counsel have not referred us to any provision of the constitution

that has been violated by such action, and we are unable to discover any. It has been often said that the power of the legislature, in making new counties, has been much abused, and we think it likely that it has been; but this does not affect the constitutional right to exercise the power."

Comr's of Putnam County v. Auditor of Allen County.
1 Ohio St. Rep. 324.

Also, in the same year in another case the same court—Ranney J. delivering the opinion, said:

"The truth is, the power to make new counties and change county lines, has alwsys existed under both constitutions: under that now in force, it is true, subject to very important safeguards. * * * * *The power must in all cases be measured by the constitution in force when the law was passed.*"

Ohio ex rel. Evans v. Dudley. 1 Ohio St. Rep. 445.

Nothing is said in any of the above cases, nor in any other, so far as I am advised, in which any construction is given to the section of the constitution hereinbefore quoted, as to the location, changing or *removal* of county seats. The power to create and locate county seats for new counties would, however, be fully implied,—for the act of creating a new county would necessarily include the power to create and locate the seat of justice for such new county: in fact it could scarcely be considered a county without a seat of justice. But the constitutional power of a change of the location of a seat of justice of a county, in a case where it has been once located and permanently fixed, or the removal of such seat of justice from one place in the county to another, does not as clearly and necessarily appear from the section of the constitution above quoted. The power of removal, however, was always understood to exist while the constitution of 1802 remained in force, and it was expressly conferred upon the legislature by the constitution of 1851. At all events, no doubts should now exist in the State of Ohio upon the subject, even in the absence of any holding of the Supreme Court of the State, affirming the existence of the power, after the illustrations of the legislative view, construction and application afforded by numerous instances; and inasmuch as

I deem the existence of the legislative power of removal of seats of justice in the State, under the constitution of 1802, to be of grave importance, in view of the results hereafter claimed concerning it, the important parts of some of the local laws by which seats of justice theretofore permanently located were removed, will be set out.

In the year 1809, by a local enactment of the general assembly, the county of Dark was created and its county seat *permanently* fixed by proceedings under the general statute then in force —mentioned in my former brief. Afterward, by a local act passed January 4th, 1811, (9 Ohio Local Laws 10,) the seat of justice thus fixed and established, was removed to the town of Greenville. The latter act was entitled

"An act to remove the seat of justice in the county of Dark."

The preamble recited:

"Whereas, It is the unanimous wish of the citizens of Dark county, that the seat of justice for said county should be removed to the town of Greenville, old fort; therefore"

"Sec. 1. Be it enacted by the general assembly of the State of Ohio, That the town of Greenville, old fort, in the county of Dark, be, and the same is hereby declared to be the seat of justice in, and for the county aforesaid, and that after said county shall be organized, all courts to be held in, and for said county, shall be held in said town of Greenville, and all officers that may be connected therewith are required to conduct themselves accordingly."

Again, the seat of justice of Franklin county was established at the town of Franklinton by local act passed March 30th, 1803, (see 3 Chase Stats. 2101.) By another local law passed February 14th, 1824, the seat of justice was removed to the town of Columbus. The title and first section of the latter act was as follows:

"An act to establish the seat of justice of Franklin county."

"Sec. 1. Be it enacted by the general assembly of the State of Ohio, That Abraham Tappan, of Geauge county, William Wetmore, of Portage county, and Elias Lee, of Cuyahoga county, or a majority of them, be, and they are hereby appointed commissioners to view the present, and such other sites for seats of justice as may be shown them in the county of Huron, and to take into con-

sideration the necessity and propriety of removing the said seat of justice for said county; and if after hearing and taking into consideration the several grievances complained of by the citizens of said county, they shall deem it necessary and expedient to remove the seat of justice, they are hereby authorized to remove the same, and to fix it at such place as to them shall appear best situated to promote the general convenience and interest of the citizens of said county, subject, however, to the restrictions hereinafter provided."

16 Ohio Local Laws 93.

Again, the county of Allen was created by local act passed February 12th, 1820, (3 Chase Stats. 2135,) and its seat of justice permanently located by special act of March 3d, 1831. The latter act was amended February 22d, 1833, so as to change the location of the county seat.

31 Ohio Local Laws 199.

Many more instances might be given, but the foregoing are sufficient to establish that under the State constitution of 1802 the power to remove county seats which had been previously permanently established, and to be exercised *ad libitum* by the people through the instrumentality of the legislature, whenever the necessities or convenience of the inhabitants of the county required such action, was the settled, universal understanding in the State; and that there was no limit to the exercise of the power other than would be implied in every other—the necessity of its reasonable application.

The foregoing construction by the Supreme Court, and by the legislatures of the State, as to the existence, extent and scope of the power reserved in reference to counties and county seats will not be reviewed or disregarded by this court.

Pennsylvania College cases, 13 Wall. 190.

Railroad Company v. Georgia, 8, Otto 359.

In view of the foregoing, two things may fairly be said to be established: first, that under the constitution of the State, the legislature had the right and power to create new counties, and to change county lines, subject only to the restriction concerning the

minimum number of square miles that each county should contain. Second, that the legislature could, at any time, by special law, at the instance of the inhabitants of any county, remove the county seat of such county, to suit the necessities or convenience of such inhabitants. *Here, all constitutional powers of the legislature ended.* All other powers, except such as were necessarily embraced by, or incidental to those so conferred, were reserved by, and remained in the people of the State.

The act of February 16th, 1846, by which the county of Mahoning was erected, and the seat of justice for it established at Canfield, was enacted in view of, and subordinate to the above mentioned constitutional powers of the legislature, and subject to any want of constitutional power on the part of the legislature to do anything more than to create the new county, and locate its seat of justice. The constitutional power to remove the county seat of such county as above mentioned, entered into, and was a part of the acts of the parties concerning anything connected with the location of the seat of justice at Canfield, to the same extent, as if the constitutional power of subsequent removal had been by express terms set forth in the act itself; and the cttizens and proprietors of Canfield must be held to have had full notice of the existence of such power, and to have performed the conditions on their part, prescribed by the act, in view of the possibility—at all events of the right—of a future reasonable exercise of the power, which might deprive them of all benefits—real or fancied—which impelled them to donate the lot and expend their money in order to secure the seat of justice to be located in their town.

No matter how strong, or how extensive the contract may be claimed, or really exist by reason of the act in question, still it can not be ot such potency or extent as to operate as a repeal or impairment of any portion of the constitution, or to deprive the people of the State of any power reserved by them, and not delegated to the legislature by the constitution.

The special act of 1846—in question—would not even have

impaired the force or obligation of a more *general statute* then in force and left unrepealed. Such general statute, if it affected in any way the permanency of the location of the county seat at Canfield, and unrepealed directly, could not have been held to have been repealed by implication, or by reason of inconsistent provisions contained in the mere local act of 1846.

Peck v. Weddell 17 Ohio St. Rep., 275, 286.

Beer Company v. Massachusetts 7 Otto, 25.

State ex rel. v. Gas Co. 34 Ohio St. R. 572.

But, it may be answered to all the foregoing that the claims made have been decided adversely by both the Supreme Court of Ohio, and this court, in what are commonly known as the tax cases. I refer among others, to the cases of

Matheny v. Golden, 5 Ohio St. Rep. 361.

State Bank of Ohio v. Knoop, 16 Howard 369.

New Jersey v. Tard, 5 Otto, 104.

Farmington v. Tennessee, 3 Otto 679.

And other cases cited by the court in the opinions delivered in those above named, in which contracts between the legislatures of States and private corporations or bodies, providing for exemptions, or partial exemptions from State taxation have been upheld, and subsequent enactments impairing them held to be void, as being within the inhibition of the Federal constitution.

A reply to the application of the law as held in the cases mentioned, to the one at bar, brings me to the consideration of a further claim, which to some extent has been already intimated: which is, that no power was conferred upon the legislature by the constitution of 1802, to locate or fix a county seat so that it would not be subject to the constitutional power of removal, which we have seen, *was* conferred. The two inconsistent powers could not exist under the same constitution. If the power to so *unalterably* fix a county seat, as that it could not be removed without a destruction of the county for which it was established, (as is claimed) existed under the constitution, then it follows that the legislature, as well as the

people of the State were deprived of the other clearly constitutional power to remove what might be so immovably fixed. On the other hand, if the right and power of removal was a constitutional right and power, not to be repealed or impaired by mere legislation, then the other power to legislate immovability, for all time to come, did not exist. Which of these inconsistent powers, then, did exist to control or authorize the act of 1846 having reference to the county seat in question?

In the first place, it may be answered, that we have seen that the power of removal has continuously been held by the State legislatures to exist; and no instance can be found in the history of the legislation of the State, (unless the one in question) in which it was ever undertaken, by any legislature, to fix unalterably any county seat.

In the second place, the right to change or alter county lines, implies a right to make the other appurtenances of the county conform to the changed condition of the county. If county lines could be changed at the pleasure of the legislature, two county seats might have been thrown into one county. Would it be claimed that the seat of justice of the county thus deprived of any seat of justice, could not be removed? Suppose the south line of Mahoning county should be so far changed northward as to leave the town of Canfield within the boundaries of Columbiana county, and the county of Mahoning was still not *destroyed*, but only *diminished*, would the plaintiffs contend that the seat of justice must still abide at Canfield, and that it could not be removed to a place within the county so changed?

If to meet such necessity it could be removed, it could also upon the ground of the existence of any other, deemed sufficient, by those interested, in the location.

In the third place, inasmuch as these necessities to create new counties, and alter county lines might well have arisen, it is absurd to contend that the inconsistent and repregnant power was delegated to the legislature of the State to contract away such right of

removal, or grant by local statute such right or franchise in the subject matter, over which the necessities of the case demanded that the inhabitants of the county should have absolute control, and thus put it out of the power of the people to meet the necessity when it should arise.

These considerations render the distinction between the tax cases referred to, and the case at bar, exceedingly plain. In the former it was universally held by the courts that the legislatures contracting for the exemptions, or partial exemptions possessed the constitutional power so to contract. The State legislation, of such exemptions, in each instance was held constitutional. They were, therefore, valid, constitutional laws, out of which contracts or grants arose that were sought to be impaired by subsequent legislation, that was held to be within the inhibition of the constitution of the United States. Not so here. The law out of which it is claimed the rights of the plaintiffs arise, was itself unconstitutional and void in the very particular in which its obligation is said to be impaired by the subsequent act of April 9th, 1874.

It therefore behooves the plaintiffs, when they come here to invoke the protection of the provisions of the Federal constitution, to present to the court a law which may be upheld under the constitution of the State, so far as it is claimed certain rights or benefits arising under it are concerned.

The foregoing, if well founded, answers also all objections to the act of April 9th, 1874, as not providing for *compensation* for the right or franchise claimed by plaintiffs, under the act of 1846.

SECOND.

A second additional claim is, that the creation, maintenance and regulation of courts, including the times when, and the *places* where they shall be held, their removal from one place to another, to answer the convenience or necessities of the public, are matters connected with the *police powers* of the State. That in fact, courts —especially criminal courts—are necessary instrumentalities in the due enforcement and administration of the *police powers* of the

State. That the State cannot divest itself of any part of its police power, and that if the regulation of its courts, which are necessary adjuncts of such power, comes within the scope of the power itself, as a necessary incident, control over them, as to time and place cannot be relinquished by the State; and if in order to remove them from one place to another, it becomes either necessary or convenient to remove the county seats at which they are held, the power to do so exists as a necessary incident of the exercise of the police power of the State.

What is the extent of the police power of the State? The question is well answered in the language of Mr. Justice Bradley, in *Beer Co. v. Massachusetts* 97 U. S. 33, as follows:

"Whatever differences of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does extend to the protection of the lives, health and property of the citizens, and to the preservation of good order and the public morals. The legislature cannot by any contract, divest itself of the power to provide for these objects. They belong emphatically to that class of objects which demand the application of the maxim, *Salus populi Supremea lex*; and they are to be attained and provided for by such appropriate means as the legislature may devise. *That discretion can no more be bargained away than the power itself.*"

See also, *Fertilizing Co. v. Hyde Park*, 97 U. S. 659.

It may well be inquired how the State is to protect the *lives*, *health* and *property* of the citizens, or preserve *good order* and the *public morals*, without the aid of courts by which to try and punish all transgressors against the laws enacted, and police regulations made for that purpose? Laws without number might be enacted, intended to effect these salutary objects, but they would all be dead letters without enforcement by means of the courts.

The power to institute and maintain these courts, necessarily includes the power to locate them at the most convenient place to accomplish the objects in view. The same may be said concerning jails and other means of imprisonment.

Whenever circumstances arise, when to guarantee protection to life and property, it is deemed advisable by a majority of the inhabitants of a county, to have their courts held at a particular place in the county, or to have their jails or prisons removed from one place to another, no previous contract of the State, or claim of a contract can defeat the right to such protection, in the way stated. Even if by previous *valid* contract with the State valuable rights had been conferred, they must give way without being compensated for to the demand of the public in this regard.

Sedgwick Stat. and Const. Law, 583, 534. 9 Otto 626;

2 *Dillon Munic. Corp.*, sections 93 and 455.

Mr. Justice Field in *Boyd v. Alabama*, 94 U, S. 645, says:

"We are not prepared to admit that it is competent for one legislature, by any contract with an individual, to restrain the power of a subsequent legislature to legislate for the public welfare, * * * * * * * * *."

I am aware that the preceding points were not presented in this case heretofore, in any stage of it. If, however, any objection be made on that account to the presentation of them now, I refer the court to the case of *Boyd v. Alabama*, 94 U. S. 645.

It seems to be conceded by counsel for plaintiffs, that the power of legislative control over county seats is, at least, a power *kindred* to the *police power* of the State; and an effort is made in argument to ally it to the tax cases, heretofore referred to, for the purpose of applying the law of those cases to the one in hand. He says:

"The power to levy taxes surely is no less a police power—a sovereign power—a function of civil government—than the power to fix the place *where* the business of levying and paying taxes shall be done."

"It never has been and never will be contended that the latter is of a higher grade than the former. We concede enough, when we admit that they are *kindred* powers, and that a contract in respect to one is such in its nature that it requires the exercise of the same kind of power that it would to make a contract in regard to the other; so that, indisputably, any such contract, being of the

same family, depends upon, and must be controlled by the same principles." (Argument Hon. L. Day, 31.)

Evidently, the above paragraph was written anterior to the publication of the decisions in the cases heretofore cited—*Beer Co. v. Massachusetts* and *Fertilizing Co. v. Hyde Park*, otherwise the concession would not likely have been so broad. All that is contended for upon the subject is, that the power to remove county seats is *kindred* to what are well understood, in the light of judicial decisions, to be police powers of the State, and that the relationship is so close that the former *may* be *classed* with the latter, so as ordinarily to make it amenable to the same general principles.

In the light of the recent decisions of this court last named, the following statement of the law by counsel is somewhat questionable:

"No matter whether the contract related to the taxing power, the ferry, bridge or highway power; or *municipal police power;* neither the subject matter of the contract, nor want of legislative power to make it, has been deemed sufficient to withdraw it from the protection of the constitution." *Id.* 31.

However, to avert the inevitable result, in case it should be held that the power to remove county seats is within the *police powers* of the State, counsel contend (*Id.* 32) that:

"The Slaughter House cases seem to settle the question that matters pertaining to the police power of the State may be subject matter of contract, and within the contracting power of the State."

It may be safely conceded that matters pertaining to the police power of the State may form the subject matter of contracts, but it does not by any means follow, that such contracts concerning such subject matter come within the protection of the constitution of the United States. The State may make contracts regarding such matters, and remain the sole judge of their validity and obligation. The only question to be settled by this court is, whether the subject matter of the contract is clearly within the scope of the police power of the State, and if it is found to be so, the inhibition of the Federal constitution can have no force to uphold it, against the consent of the State.

A corporation, or individual claiming the benefits of such contract, must rely solely upon the good faith and magnanimity of the State with which it was made, for performance. Not only so, but if the public welfare demands that the contract concerning such subject matter be disregarded by the State for the good of the many, the benefits intended to be conferred on the few must be sacrificed, for the general good. The *power* to do this, "*Cannot be bargained away.*"

The question is not then, whether contracts embracing such subject matters appertaining to the police power of the State *may be made*, but it is what is the *effect* and *obligations* of the contracts when made. As in the Slaughter House cases,

"The legislature might prescribe and determine the *locations* where the business of slaughtering for a great city may be conducted, and grant exclusive privileges in relation thereto,"

Yet it will hardly be contended, that the legislature might not, by enactment subsequent to that prescribing such location, and granting such exclusive privileges, *change* the *location* where such business might be carried on, and divest such exclusive privileges, without compensation, at any time the welfare of the *public* should require it. Otherwise, if the slaughter houses of the "Slaughter House Co." should become the cause of pestilence and death to the inhabitants of the city of New Orleans, the legislature of the State would be powerless to avert those calamities, by an exercise of the police power of the State on the demand of the stricken public; and so, too, the streets and thoroughfares of Hyde Park, might still be the conduits by which all the gore, entrails and other festering filth and disease breeding offal from the shambles and slaughter houses of Chicago might be transported, to enrich the few, at the expense of the health and lives of the inhabitants of that village.

Again, counsel says:

"If a contract as in those cases, (slaughter house cases) granting exclusive privileges in regard to the location of slaughter houses, affecting a large territory, and more then five times the number of inhabitants contained in the county of Mahoning, may be made,

surely an exclusive privilege in the location of the place where the county business of a county is to be conducted, must be equally a subject matter of contract, and within the legislative power to contract."

I can scarcely realize that it is possible, that the learned Counsel has lost sight of the fact, that the *exclusive privileges* granted to the Slaughter House Co. were never sought to be divested by the *State*, by any subsequent action on its part, legislative, or otherwise. The act of the legislature of the State of Louisiana, by which the privileges in regard to the location of the slaughter houses, and other privileges were conferred, was never attacked by the *State*, but by private individuals and companies, and the provision of the Federal constitution in question in this case, was never invoked to uphold the legislation referred to.

If the *State* of Louisiana in the reasonable exercise of the police powers, had legislated a *removal* of the *location* of the slaughter houses of the company, and had even gone farther, and legislated an end to the exclusive privileges granted, so far as their exercise at such original location was concerned, the opinion is ventured that such legislation would not have been held void under the constitutional provision invoked in the case at bar.

THIRD.

Still assuming for the purposes of the argument, that the law of 1846, in terms amounted to a contract, as claimed by the plaintiffs, for the *permanent* location of the county seat at the town of Canfield, and that, in the language of the learned gentleman who represents them, the whole claim is as follows:

"It was this *permanency*, and *nothing else*—be it observed—that was offered to the citizens of Canfield as an inducement to do what was desired of them. It was *that*, and that alone for which the State demanded a specified price in land and money. It was for *that*, and that only, the price was paid. *That* and the price asked therefor, constituted the sole object of the section. (Section 8, act of 1846.) *That* was what, in contemplation of the parties, was to be guaranteed by the State. It was regarded by them as

valuable. It was the subject matter of negotiation, for which the price was demanded by one party and paid by the other."

Argument Hon. L. Day, 13.

It may still not be amiss to determine in the light of *previous use* of the words *permanent* and *permanently* by the legislatures of the State, what was really meant, in a *legislative* sense, by those words, and what "*that*," which it is said was the subject matter of the contract really was, in the legislative view of it.

If it be found that a word and its derivations have been used continuously, in numerous instances, through a long course of years, by many different legislatures of the State, in a particular sense or meaning, when applied to a particular kind of object, it is at least reasonable to assume that the same use of the term as applied to one of the same objects in one instance of the series was not intended as an exceptional use, to signify something entirely different in that case, from all others.

It will be found, that the word which it is said expressed the scope and extent of the subject matter of the contract contended for in this case, had at the time of its use in the acts of 1846, a well defined *legal*, or *legislative* significance in Ohio, whatever its meaning may have been in the lexicons, or as it was used elsewhere.

How then, for the legislative purposes of this case should the "*that*," which the legislature of 1846 agreed to confer, as expressed by the word *permanently* be arrived at? Not—I submit—by any general or extended signification of the word *permanently*, that may be found in Webster or any other lexicographer, but by an examination into what was meant by the lawmakers of Ohio, when they applied the word—for want of a better one—to the same object—a county seat. This course will settle all subtle, difficult or learned disquisitions concerning the controversy.

In the first place we shall find that all—or nearly all—the county seats in the State that were establishhd and located by act of the legislature—directly—were located *permanently;* and in the second place, that whenever the legislature erected a new county

and provided in the law erecting it, that the county seat should be located by commissioners under the general statute, the provision was for the location by the commissioners, of a *permanent* seat of justice for such county.

Thus we find by an act passed March 24th, 1803, 3 *Chase, Stats.* 2099, entitled, "An act for the division of the counties of Hamilton and Ross," the following 6th section:

"Sec. 6. That until *permanent* seats of justice shall be affixed in the several new counties by commissioners appointed for that purpose, the following places shall be temporary seats of justice, and courts shall be held thereat. In the county of Warren, at the house of Ephraim Harthaway, on Turtle creek: in the county of Butler, at the house of John Florence, in the town of Hamilton: in the county of Montgomery, at the house of George Newcum, in the town of Dayton: for the county of Green, at the house of Owen Davis, on Beaver creek."

By an act passed March 25th, 1803, entitled "An act for erecting a part of the counties of Jefferson and Washington into a separate county, by the name of Columbiana:" It is provided by the 3d section,

"That until a *permanent* seat of justice be fixed in the said county, by commissioners appointed for that purpose, the temporary seat of justice shall be at the house of Matthias Lowry, in the twelfth township and second range; and courts shall be held thereat, in and for the county of Columbiana aforesaid."

3 *Chase, Stats.* 2100

In an act passed March 25th, 1803, entitled, "An act for the division of the county of Washington," by which the county of Galion was formed, is contained the following 3d section:

"Sec. 3. That the temporary seat of justice shall be, and hereby is established on the public square, in the town of Gallopolis, until the *permanent* seat is fixed by commissioners, as the law may direct."

3 *Chase, Stats.* 2101.

In an act passed March 30th, 1803, entitled "An act to establish the county of Franklin," occurs the following 3d section:

"Sec. 3. That courts for the said county of Franklin shall be

holden in the town of Franklinton until a *permanent* seat of justice be established therein, agreeably to the provisions of the act entitled 'an act establishing seats of justice.'"

3 *Chase, Stats.* 2101.

In an act passed January 7th, 1804, entitled "An act to establish the county of Muskingum," occurs the following 3d section:

"Sec. 3. That the temporary seat of justice for said county shall be at the town of Zanesville, until the *permanent* seat shall be fixed according to law."

3 *Chase, Stats.* 2101.

By an act passed February 18th, 1805, entitled "An act erecting a part of the counties of Ross, Adams and Clermont, into a separate county, by the name of Highland," it is provided by the 5th section, as follows:

"Sec. 5. That the courts to be held in the said county of Highland, shall be holden in the town of New Market, until a *permanent* seat of justice shall be established in said county."

3 *Chase, Stats.* 2102.

By an act passed February 20th, 1805, entitled "An act, establishing the county of Champaign," it is provided by the 3d section, as follows:

"Sec. 3. That the temporary seat of justice for said county, shall be at the town of Springfield, at the house of George Fithen, until the *permanent* seat of justice be fixed according to law."

But it is not necessary to set out the sections of all the acts of the general assembly in which occurs the words *permanent* and *permanently*, in order to show the sense in which they were used. It may be stated, however, that sections in substantially the same language occur in the following laws, with reference to the county seats of the respective counties named.

Act of December 31st, 1805, entitled "An act for the division of Trumbull county."

3 *Chase*, 2103.

Act of January 16th, 1807, entitled "An act for the division of Montgomery county." *Id.* 2104.

Act of February 10th, 1807, entitled "An act for the division of Geauga and Trumbull counties." *Id.* 2105.

Act of February 10th, 1808, entitled "An act establishing the county of Delaware." *Id.* 2107.

Act of February 13th, 1808, entitled "An act to establish the county of Tuscarawas." *Id.* 2109.

An act of January 12th, 1810, entitled "An act for erecting a part of the counties of Ross, Franklin and Fairfield, into a separate county by the name of Pickaway." *Id.* 2111.

An act of January 31st, 1810, entitled "An act for erecting a part of the counties of Muskingum and Belmont, into a separate county, by the name of Guernsey." *Id.* 2112.

Act of February 19th, 1810, entitled "An act establishing the county of Fayette." *Id.* 2113.

Act of same date, entitled "An act establishing the county of Clinton." *Id.* 2113.

Act of January 2d, 1813, entitled "An act to erect the county of Harrison." *Id.* 2116.

Act of January 4th, 1815, entitled "An act to erect the county of Pike." *Id.* 2118.

Act of February 3d, 1815, entitled "An act to attach part of the county of Washington to the county of Warren, and to organize the county of Monroe into a separate county." *Id.* 2120.

Act of January 12th, 1816, entitled "An act to erect the county of Lawrence." *Id.* 2122.

Act of December 26th, 1817, entitled "An act to erect the county of Perry." *Id.* 2122.

Act of December 27th, 1817, entitled "An act to erect the county of Brown." *Id.* 2124.

Act of December 30th, 1817, entitled "An act to erect the county of Logan." *Id.* 2127.

Act of December 26th, 1817, entitled "An act to erect the county of Clark." *Id.* 2125.

Act of January 3d, 1818, entitled "An act to erect the county

of Hocking, and to attach part of the county of Ross to the county of Jackson." *Id.* 2127.

Act of January 7th, 1819, entitled "An act to erect the county of Shelby." *Id.* 2131.

Act of February 8th, 1819, entitled "An act to amend the act, entitled 'An act to erect the county of Brown.'" *Id.* 2132.

Act of January 10th, 1820, entitled "An act to erect the county of Union." *Id.* 2133.

Act of February 12th, 1820, entitled "An act for the erection of certain counties therein named." *Id.* 2134.

Act of December 26th, 1822, entitled "An act to erect the county of Lorain." *Id.* 2135.

Act of December 25th, 1832, entitled "An act to erect the county of Carroll." *Id.* 2146.

By act of February 14th, 1843, as follows:

"Sec. 1. Be it enacted by the general assembly of the State of Ohio, that the seat of justice of the county of Lucas is hereby declared to be *permanently located* at Maumee City, in said county, where the court house now stands, and at the place designated by the commissioners appointed by the legislature in A. D. 1840, to review and relocate said seat of justice,"

5 Ohio, St. Rep. 490.

In the foregoing acts, the words *permanent* and *permanently*, occur *thirty-six times*, and in each case, having reference to the establishment and location of a county seat. The words are also used by the different legislatures, in the same connection, through a series of *forty years*.

It will be more apparent, however, that the words mentioned, were not used to express the idea of *immovability*, in the acts of the general assembly, above cited, after it has been seen how some ot such *permanently* established seats of justice were afterward removed, and removed, without change or destruction of the counties in which they were located.

The cases of the removal of the county seat of Dark county,

of Huron county, of Franklin county and of Allen county, have been already mentioned; and all occurring under the constitution of 1802. There were other cases of such removal, prior to the adoption of the constitution of 1851, but those mentioned are sufficient to establish, that the different legislatures which passed acts to effect such removals, did not consider that a *permanent* establishment of a seat of justice by a preceding legislature, prevented a removal of a seat of justice, when its removal was deemed necessary; and in this way the legislative signification of the words *permanent* and *permanently* was established.

The new constitution took effect March 10th, 1851, and under the 30th section of article two, the work of removal of the *permanently* established seats of justice continued. The section is as follows:

"No new county shall contain less than four hundred square miles of territory, nor shall any county be reduced below that amount; and all laws creating new counties, changing county lines, or *removing county seats*, shall, before taking effect, be submitted to the electors of the several counties to be affected thereby, at the next general election after the passage thereof, and be adopted by a majority of all the electors voting at such election, in each of said counties; * * * * * *."

By an act of the general assembly enacted in 1852, under the above section of the constitution, the seat of justice of Lucas county, which we have seen was *permanently* located, by special statute, was removed to Toledo.

So too, in 1851, by similar enactment, the county seat of Perry county, which, we have seen was *permanently* located by act of December 26th, 1817, was removed.

In 1866, by local law, the county seat of Wood county, which we have seen was *permanently* located by act of February 12th, 1820, was removed. 63, Ohio Laws, 58.

So too, the county seat of Pike county, which was *permanently* located by act of January 4th, 1815, was removed by act of February 7th, 1861. 58, Ohio Laws, 10.

The above examples are sufficient to establish that the words *permanent* and *permanently* were used by the general assembly to express that a seat of justice thus established, should remain in the place where located, thus permanently, until removed according to law; and that it was in no instance intended by the use of either word, that the duration of the location of the county seat should be coextensive with the existence of the county, in which it was so located.

Did the word *permanently*, then, have any different, or more extended signification in the act of 1846? Can it be either fairly or reasonably contended, that the general assembly, which had been applying the term for over forty years to county seats, without intending that it should signify *immovability*, or a *permanency* of duration coextensive with the existence of the county containing such objects, that in one csse of the uniform series, after it had acquired an unmistakable legislative signification, it should be used to express one, radically different,—and that too, at a time, when (it is contended) the intent was to place the object to which it was applied, in an exceptional state, as compared with those to which it had in every other case, been applied?

The difficulty of assent to the contention of the plaintiffs, in view of the foregoing, is vastly increased, when it is considered that the claim involves also, an intention on the part of the legislature of 1846 to abrogate and repeal a constitutional right and power, as heretofore shown.

I submit then, that if as said by the counsel for plaintiffs, in the language above quoted from his argument, that if it was "the *permanency*, and *nothing else* that was offered to the citizens of Canfield as an inducement to do what was desired of them," if it "was for *that* and that *only*, the price was paid," and if "*that* was the *subject matter* of negotiation," the plaintiffs took by the act precisely the same degree of permancncy in the location of the seat of justice at Canfield, that was taken by the citizens of every other town or place where seats of justice were established and located by

means of all the special acts above enumerated; and took a *permanency*, at all times obnoxious to be terminated by the same power that created it—the legislature of the State.

FOURTH.

A few of the points sought to be made, and some of the grounds assumed by the counsel for plaintiffs will now be noticed.

It is said by counsel,

"So far as regards the creation of the county and the location of the county seat, the act (of 1846) was complete without the eighth section. But that section was added, and added for a purpose clearly expressed in the section. The object sought to be accomplished and the means of its attainment are not left in doubt. The intention is expressed in 'words too plain to be mistaken.'" (Argument of Hon. L. Day, 12.)

If what is meant to be claimed is, that by the first section of the act, the seat of justice was located at Canfield as county seats had ordinarily been located by the general assembly previous to that time, the claim is denied. It has already been shown that it was almost, if not altogether the universal custom for the general assembly to either itself *permanently* locate the seat of justice, or provide in the laws creating new counties, that they should be *permanently* located by commissioners, to be appointed under the general statutes in force.

By the first section of the act, it is true, the seat of justice was located at Canfield, but in a temporary or *exceptional* manner. The power and opportunity to make further provisions concerning it, by subsequent sections or parts of the act, were reserved. If the ordinary custom had been observed, and the first section had provided that the seat of justice should be *permanently* located, or located in the same manner as all other county seats had theretofore been fixed, such provision would undoubtedly have ended the matter, and the eighth section would have been alike unnecessary and superfluous. Therefore, the eighth section was added, "*and added for a purpose.*" What was the purpose? I submit that it was no other, than to locate the seat of justice *permanently* at Canfield, as

contradistinguished from such temporary location thereof, provided land and money should be *donated* for public buildings.

Now the eighth section accomplished that object, and by means of it, the citizens of Canfield, if they saw proper to *give* a bond and *donate* a lot of land, were then to have a *permanently* located seat of justice. In other words, that which was before *temporary*, was to become *permanent*. But how permanent? More so than any of the others in the State located in the same way, and by the same language? Or rather, was it not meant that upon the *giving* of the bond and the *donation* of the land, the whole intent and scope of the law, as a whole, should be the same as if the first section had provided that the seat of justice should be permanently located at Canfield, and nothing more?

If the first section had so provided, there could be no doubt as to the intent of all parties being the same, as controlled in the cases of *permanent locations* heretofore noticed.

But what were the citizens of Canfield to do. The counsel for plaintiffs answers by saying, (page 12)

"The *sole* object of its enactment (8th section) was to procure from the citizens of Canfield ground for the public buildings and means for their erection. and thereby to save the people of the county from taxation for that purpose."

This statement of the object of the section is undoubtedly correct. The *object was* to obtain without resort to taxation, a lot, and money to erect county buildings. But how obtain them? By *gift* —*donation*—or by giving something in exchange for them—and if the latter, what was to be given?

In the first place, the language of the section implies that both *lot* and *money* were to be *donations* or *gifts*,—not objects *donated* or *given* by way of *consideration* for a contract or grant—but actual *gifts*. Observe the language:

"Shall *give bond* * * * * and shall ALSO *donate*, &c., * * *."

It will be remembered, that it is insisted that both the *bond* and the *lot of land*, formed the *consideration* of the contract or grant

on the side of the citizens of Canfield. But one of them—the *lot of land*—was to be *donated*. So far as that part of the consideration is concerned, the language implies that nothing was to be given, nor no act performed as an equivalent for it. Neither could any agreement be implied from the term *donate*, but on the other hand it would signify the reverse—that the lot was to be a *gift* from the citizens of Canfield, that was not to be paid for in any manner.

In the second place, the use of the word *also* in the section is significant. What does it signify? *Likewise* or *too*. It denotes that what follows is *all so*, or *entirely like that which preceded*, and may be affirmed with the same truth.

Webster defines *also*,—"*likewise*, in *like manner*."

The word *also*, therefore, in the position in which it is found in the section, established a *relation* between the word *give*, having reference to the *bond*, and the word *donate*, having reference to the lot. What is that *relation?* There might otherwise well arise doubts whether the word *give* as used, implies to give without consideration for the giving; but no such doubts can exist when the word *donate* preceded by *also* is reached. Referring to the lexicographers again (always good authority) it will be found that Webster defines the word *donate*, "*to give as a donation*." Now what is a donation? The same author defines it as follows: "1. The act of *giving* or *bestowing*." "2. In *law*, the act or contract by which a thing, or the use of it, is transfered to a person, or corporation, as a *free gift*, * * * * *." "3. That which is *given* or *bestowed:* that which is transferred to another *gratuitously*, or *without a valuable consideration*.."

Having thus, the signification of the latter word selected to express the *manner* in which the *lot* was to be transferred for public purposes to the county, and having seen that by the use of the word *also* it was intended that the *bond* should be given *likewise*—"*in like manner*," that is—"*gratuitously,—without a valuable consideration*," the meaning of the section becomes very apparent; and it amounted to nothing more, than that the citizens of Canfield were willing to

donate the sum of five thousand dollars, and a lot of land, for the use of the county, if the county seat were located in their town, in the ordinary way,—not in some exceptional manner—that would give them a legal right to resist a subsequent removal of it. This is what the general assembly undertook (in a somewhat awkward manner, it is true,) to express; and the general language of the section, and the words specially mentioned above in particular, must be tortured into strained and occult significations, and every rule of construction heretofore referred to as applicable in this case disregarded, before the claim made by plaintiffs can be supported. The citizens of Canfield designed to *give*, and the general assembly intended to take the *donations* in the same manner, that the citizens of Youngstown subsequently donated, and the legislature of 1874 received, a lot of land in Youngstown of the value of fifteen thousand dollars, and the sum of one hundred thousand dollars in money for the same purpose, and with the like understanding that the seat of justice could be removed at any time that the citizens of the county would vote to have it done.

But again, if the above construction of the eighth section of the act of 1846 cannot be sustained, it does not follow that the construction put upon it by counsel for plaintiffs is the correct one. Leaving out of view the interpretation above claimed by defendant, there still remain the two adverse claims as to the force and effect of the section; first, that of plaintiffs that it was intended to establish the seat of justice at Canfield by contract with the citizens of that town, by which they should take legal rights by which they could prevent removal of it, by subsequent legislation, in disregard of such rights; and the contention of defendant, that no contract was designed or made, or if there was, that the same on the part of the State was only to the effect that the seat of justice should be located at Canfield with the same degree of *permanency* as other seats of justice had previously been established,—that is—subject to subsequent removal.

Which of these constructions is the most natural and consistent

one? The answer, as has been seen, depends upon whether the word *permanently* was used in the strained, extended signification contended for by the Counsel, or in the *legislative* and *judicial* meaning which it had acquired by long usage in Ohio.

Applying to the section the rule of construction held in *Fertilizing Co. v. Hyde Park, supra*, little, if any uncertainty can remain. In the case cited, the court say :—

"The rule of construction in this class of cases is that it shall be most strongly against the corporation. Every reasonable doubt is to be resolved adversely. Nothing is to be taken as conceded but what is given in unmistakable terms, or by an implication equally clear. The affirmative must be shown. *Silence is negation, and doubt is fatal to the claim.* This doctrine is vital to the public welfare. It is axiomatic in the jurisprudence of this court."

If the foregoing rule shall be adhered to, the defendant is placed in no danger by conceding that the effect of the eighth section, and compliance with its terms by the citizens of Canfield resulted in a *contract* for the *permanent* establishment of the seat of justice at Canfield,—for, in accordance with the rule, the most *limited* and *restricted* sense must be predicated of the word used to imply *duration*, and hence the *legislative* signification and construction be adopted.

The result in the one case, is to deprive the State of a part of her sovereignty,—in the other to render her legislation uniform and consistent.

Respectfully submitted,

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